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No. 90-1435-CSX
Status: GRANTED

Title: Cook County Officers Electoral Board, et al., Petitioners
v.
Dorothy Reed, et al.

Docketed:
March 11, 1991

Court: Supreme Court of Illinois

Vide:
90-1126

Counsel for petitioner: Odelson,Burton Stephen

Counsel for respondent: Pincham,R. Eugene, Adamski,Gregory A.

1/15: Ord. granting ext. of time to file, to 3/11, by Stevens, J. (CITED); 40 copies mailed 3/11 and recd. 3/13.

Entry	Date	Note	Proceedings and Orders
1	Jan 10 1991	G	Application (A90-536) to extend the time to file a petition for a writ of certiorari from January 10, 1991 to March 11, 1991, submitted to Justice Stevens.
2	Jan 14 1991		Response to application (A90-536) filed by respondents Reed, et al..
3	Jan 15 1991		Application (A90-536) granted by Justice Stevens extending the time to file until March 11, 1991.
13	Mar 7 1991	G	Motion of Independent Voters of Illinois-Independent Precinct Organization for leave to file a brief as amicus curiae in No. 90-1126 filed.
4	Mar 11 1991	G	Petition for writ of certiorari filed.
5	Mar 28 1991		Waiver of right of respondent Illinois as Intervenor to respond filed. VIDED.
7	Apr 8 1991		Order extending time to file response to petition until April 15, 1991.
8	Apr 8 1991		The above extension is for all respondents.
9	Apr 17 1991		DISTRIBUTED. May 9, 1991
11	May 13 1991		REDISTRIBUTED. May 16, 1991
12	May 13 1991	X	Reply brief of petitioners Cook County Officers Electoral Board, et al. filed. VIDED.
14	May 20 1991		Motion of Independent Voters of Illinois-Independent Precinct Organization for leave to file a brief as amicus curiae in No. 90-1126 GRANTED.
15	May 20 1991		Petition GRANTED. The case is consolidated with No. 90-1126 and a total of one hour is allotted for oral argument.
			**
16	Jun 15 1991	G	Motion of petitioners Cook County Officers Electoral Board, et al. to expedite oral argument filed.
25	Jun 15 1991	G	Motion of petitioners Cook County Officers Electoral Board, et al. for divided argument filed.
17	Jun 28 1991		Motion of petitioners Cook County Officers Electoral Board, et al. to expedite oral argument GRANTED.
18	Jul 5 1991		Joint appendix filed. VIDED.
19	Jul 5 1991		Brief of petitioner Cook County Officers Electoral Board, et al. filed.
20	Jul 5 1991		Brief amicus curiae of ACLU of Illinois filed. VIDED.

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No. 90-1435-CSX

Entry	Date	Note	Proceedings and Orders
21	Jul 5 1991		Brief amicus curiae of Committee for Party Renewal filed. VIDED.
22	Jul 15 1991		CIRCULATED.
23	Jul 19 1991		Certified copy of the original record received. (1 box) VIDED.
24	Jul 19 1991		SET FOR ARGUMENT MONDAY, OCTOBER 7, 1991. (4TH CASE)
26	Aug 2 1991		Request by respondents for extension of time to file brief on merits denied.
27	Aug 12 1991		Brief of respondents Dorothy Reed, et al. filed. VIDED.
29	Sep 12 1991	X	Reply brief of petitioners Cook County Officers Electoral Board, et al. filed.
28	Sep 13 1991		Motion of petitioners Cook County Officers Electoral Board, et al. for divided argument GRANTED. to be divided as follows: petitioners Barbara Norman, et al. - 15 minutes; petitioners Cook County Officers Electoral Board, et al. - 15 minutes; respondents Dorothy Reed, et al. - 30 minutes.
30	Oct 7 1991		ARGUED.

①

No. 90-1435

Supreme Court, U.S.
FILED
MAR 11 1991
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

COOK COUNTY OFFICERS ELECTORAL BOARD, ***et al.,***

Petitioners,

vs.

DOROTHY REED, ***et al.,***

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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March, 1991

QUESTIONS PRESENTED

1. Does a requirement that a new party running only in a county obtain a total of 50,000 signatures when statewide candidates need only obtain 25,000 signatures unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Does a requirement that new party candidates for countywide offices are barred unless the party candidates running in a district of that county also have sufficient petition signatures unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

3. Does a restriction on the expansion of city political parties to countywide parties by prohibiting use of the same party name unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES

The parties to the proceedings below include the petitioners, the Cook County Officers Electoral Board and its members, David D. Orr[1], County Clerk of Cook County, Illinois; Aurelia Pucinski, Clerk of the Circuit Court of Cook County and Ernesto D. Borges, Jr.[2]

The respondents include the objectors to the Harold Washington Party candidates: Dorothy Reed, Valerie Sutton, Patton L. Feichter, Erwin Ricks and David Barrera.

Certain other respondents herein are the candidates of the Harold Washington Party. On October 19, 1990, these respondents filed their own Petition for Certiorari (No. 90-1126): Barbara J. Norman, Janice H. Robinson, Donald Pamon, Heldia Richardson, Tommy Brewer, Charles W. Alexander, Dorothy C. Hogan, Will Lawrence, Kenneth G. Hopkins, R. Eugene Pincham, Robert E. Pincham, Jr., Robert E. Brooks, Percy V. Coleman, Vivian D. Stewart-Tyler, James A. Deans, Dino F. McNeal, Mary King Criss, David T. Persons, Mello Sam H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr. and Bobbie J. Smith.

The remaining respondents are the Chicago Board of Election Commissioners and its members, Michael Hamblet, Arnette Hubbard and Raymond Jagielski.

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[1] Mr. Orr succeeded Stanley T. Kusper, Jr. as County Clerk on December 3, 1990. He is named herein pursuant to Rule 35.3.

[2] The statutorily designated third member of the Electoral Board, State's Attorney Cecil Partee, and his substitutes, Treasurer Edward Rosewell and Sheriff James O'Grady, were all ineligible to serve since they were running against HWP candidates. Attorney Ernesto D. Borges, Jr., was appointed as a public member of the Electoral Board by the Chief Judge of the Circuit Court of Cook County pursuant to §10-9 of the Illinois Election Code.

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No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

COOK COUNTY OFFICERS ELECTORAL BOARD, ***et al.,***

Petitioners,

vs.

DOROTHY REED, ***et al.,***

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

The petitioners, the Cook County Officers Electoral Board and its members, David D. Orr, Aurelia Pucinski and Ernesto D. Borges, Jr., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Illinois entered in the above-entitled proceeding on October 12, 1990.[3]

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[3] The decision of the Electoral Board was adopted by a 2-1 vote.

OPINIONS BELOW

The order of the Supreme Court of Illinois has not yet been reported and is reprinted in the appendix, p. 2a, *infra*. The supreme court has not yet issued the opinion "to be issued at a later date" referred to in the order. The memorandum opinion of the Circuit Court of Cook County, Illinois (Wachowski, J.) has not been reported. It is reprinted in the appendix, p. 16a, *infra*. The decision of the Cook County Officers Electoral Board has not been reported. It is reprinted in the appendix, p. 29a, *infra*.

JURISDICTION

The order of the Supreme Court of Illinois was issued on October 12, 1990. On October 18, 1990, the supreme court denied a motion to recall its mandate. No petition for rehearing was filed. On January 15, 1991, Justice Stevens ordered that the time for filing this petition for writ of certiorari be extended to and including March 11, 1991.

The petitioners invoke jurisdiction pursuant to 28 U.S.C. § 1257 (a). The Illinois Supreme Court's order construed the provisions of Ill.Ann.Stat. ch. 46, ¶¶ 10-2 and 10-5.2 (Smith-Hurd 1990 Supp.) in a manner contrary to the First and Fourteenth Amendments to the United States Constitution as interpreted by this court.

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievance.

Fourteenth Amendment to the United States Constitution:

No state shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Ill.Ann.Stat. ch. 46, ¶ 10-1 (Smith-Hurd 1990 Supp.) (Illinois Election Code)

(Article 10. Making of Nominations in Certain Other Cases) §10-1. Political parties as hereinafter defined and individual voters to the number and in the manner hereafter specified may nominate candidates for public offices whose names shall be placed upon the ballot to be furnished, as hereinafter provided: However, no nomination may be made under the provisions of this Article 10 by any established political party which at the general election next preceding, polled more than 5% of the entire voter case in the State, district or unit of local government for which nomination is made. * * *

Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1990 Supp.) (Illinois Election Code)

* * * [a]ny such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk * * *. Any such petition for the formation of a new political party * * * shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the * * * political subdivision * * * at the next ensuing election then to be held * * *.

* * *

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of the petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of the those candidates to be elected from the particular district. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large. * * *

The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at such next ensuing election such list or an adjusted list in accordance with section 10-

11. of party candidates for offices to be voted for * * * in such district or political subdivision less than the State * * * .

* * * If, at such ensuing election, * * * any other candidates of the new political party shall receive more than 5% of the votes case for the office or offices for which they were candidates at such election * * * in any district or political subdivision, as the case may be, then and in that event, such new political party shall become an "established political party" within * * * such district or political subdivision less than the State, as the case may be, in which such candidate or candidates received more than 5% of the votes cast for the office or offices for which they were candidates. It shall thereafter nominate its candidates for public offices to be filled in * * * such district or political subdivision, as the case may be, under the provisions of the laws regulating the nomination of candidates of established political parties at primary elections and political party conventions, as now or hereafter in force.

Ill.Ann.Stat. ch. 46, ¶ 10-5 (Smith-Hurd 1990 Supp.) (Illinois Election Code)

All petitions for nomination, shall, besides containing the names of candidates, specify as to each:

* * *

(2) The new political party, if any, represented, expressed in not more than 5 words. However, such party

shall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which is authorized to do so.

STATEMENT OF THE CASE

This case concerns the right of the candidates of the Harold Washington Party ("HWP") to be placed on the November, 1990 ballot for election to various offices within Cook County, Illinois.

The petitioner, the Cook County Officers Electoral Board ("Board"), is an administrative agency created by Illinois law to hear and pass upon objections to nomination papers filed by candidates for public office. If its decision is appealed on administrative review to the courts, the Board joins the prevailing party in support of the decision.

On August 6, 1990, the respondents Barbara J. Norman, *et al.*, ("HWP candidates") filed nomination papers requesting that their names appear on the ballot for various offices. The HWP fielded candidates for all non-judicial county-wide offices, county commissioners to be elected at-large within the City of Chicago ("city commissioners"), county commissioners to be elected at-large from outside the City of Chicago ("suburban commissioners")[4] and for commissioners of the Metropolitan Water Reclamation District of Greater Chicago.[5]

The Electoral Board Proceedings

The respondents Dorothy Reed, *et al.*, ("objectors") filed objections to the HWP candidates, alleging that the nomination papers did not comply with various provisions of Article 10 of the Illinois Election Code. Two of these objections remain relevant to this case: [1] the name "Harold Washington Party" could not be used by the county candidates, since it was already the name of an "established political party" as defined in §10-5(2) of the Election Code[6] and [2] since 25,000 signatures were not submitted for suburban commissioner candidates, the HWP failed to file a "complete slate" for all possible "components" of Cook County, as required by §10-2.

After considering various motions and concluding an extensive trial, the Board ruled that all the HWP candidates would remain on the ballot, with the exception of the Water District and suburban commissioner candidates. The Board specifically recognized that federal constitutional guarantees prevented it from taking an overly strict construction of the statutes and removing the candidates from the ballot as urged by objectors. See pp. 40a, 48a, *infra*.

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[4] Members of the Cook County Board are elected from these two districts pursuant to Ill.Const. transition schedule, § 5(b).

[5] This is a special-purpose district which, while wholly contained within Cook County, overlaps the Chicago-suburban boundary.

[6] All statutory citations herein are to the Illinois Election Code, Ill.Ann.Stat. ch. 46, ¶ ____ (Smith-Hurd Supp. 1990).

The Circuit Court Proceedings

On administrative review, the Chicago Board of Election Commissioners and the Cook County Clerk[7] were joined as parties in order to easily subject them to the jurisdiction of the court for the purpose of enforcing orders relating to ballot printing.

The Board defended its decision, and suggested that the interpretation given to the statutes by the objectors was not consonant with the applicable constitutional principles as interpreted by this Court. The Circuit Court of Cook County affirmed the Board's decision in part and reversed it in part. The Circuit Court's decision to remove all HWP candidates rested both on their failure to include judicial candidates on the slate, which the court found to be "county offices" necessary to complete the "slate" as required by §10-2, and the party's failure to submit a sufficient quantity of suburban signatures for the suburban component of the slate. See p. 26a, *infra*.

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[7] The Clerk was named at this juncture in his ministerial capacity as issuer of the ballots, rather than merely as a member of the Electoral Board.

The Illinois Supreme Court Proceedings

Because of the great public interest in the case and the need to resolve the issues before the impending November election, the Illinois Supreme Court heard the matter on an expedited direct appeal pursuant to Ill.Sup.Ct.R. 302(b).[8]

The supreme court issued a brief order affirming the removal of the HWP candidates on the grounds that the party could not use the HWP name countywide, and that the failure of the suburban commissioner candidates to obtain sufficient signatures doomed their running-mates. The majority's order was joined by four justices. Three justices joined in two separate dissents. The supreme court indicated that a full opinion would follow, but none has yet been issued. See p. 2a, *infra*.

The Proceedings in this Court on the Application for Stay and Subsequent Developments

Denied relief by the state court of last resort, the HWP candidates filed a Petition for Stay with Justice Stevens in his capacity as Circuit Justice on October 19, 1990. On October 22, 1990, Justice Stevens issued an order stating that the petition "raised a federal constitutional question of sufficient substance to merit the attention of the full Court". In order that the status quo be maintained during the full Court's review of the case, Justice Stevens granted the petition and recalled the mandate of the Illinois Supreme Court pending further order of the Court.

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[8] The HWP first appealed to the Appellate Court for the First Judicial District of Illinois. That court apparently recognized the erroneous analysis of the Circuit Court's decision, because it ordered that the HWP candidates be restored to the ballot pending disposition of the appeal. *Reed v. Kusper*, Ill.App.Ct. No. 1-90-2708 (order of September 26, 1990).

Since the practical effect of this order was to restore the HWP candidates to the ballot, the Electoral Board and election authorities presented additional written arguments to this Court addressing the logistical difficulties in reprinting ballots only days before the election.

On October 25, 1990, the full court granted the Petition for Stay to the extent that the Board's decision was to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari. *Norman v. Reed,* ___ U.S. ___, 111 S.Ct. 333, 112 L.Ed.2d 298 (1990).

The election was conducted on November 6, 1990, using ballots modified on an emergency basis to accommodate the HWP candidates. No HWP candidate was elected. However, HWP candidates did receive over 5% of the vote in several races. Section 10-2 of the Illinois Election Code grants such successful parties equal status with the democratic and republican parties as "established political parties" in that jurisdiction, entitling them to nominate by primary and take advantage of lower petition signature requirements.[9]

The HWP candidates have filed a petition for certiorari seeking review of the Illinois Supreme Court's decision. The Board and its members now do likewise.

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[9] See Reasons for Granting the Writ, Part III, *infra.*

How the Federal Question Was Raised

Before the Electoral Board, the HWP candidates moved to dismiss the objection regarding the deficiency in the suburban commissioner petitions, arguing that the objections was based on an "unconstitutional premise". The HWP's motion cited *Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173 (1979), *Williams v. Rhodes,* 393 U.S. 23 (1968) and *Moore v. Ogilvie,* 394 U.S. 814, *inter alia,* and urged that the "well-established" principles of those cases, "it is simply impermissible to impose geographic/minimum signature requirements on new political parties attempting ballot status where the new political party, running countywide, has collected over twice as many signatures necessary to run for statewide office." Motion to Strike and Dismiss Objection No. 2 at 2-4, *Reed v. Norman,* Cook County Officers Electoral Board, Case No. 90-COEB-2.

The Board's decision on this issue rested on the fact that the objectors' position could not be reconciled with the candidates' and their supporters' rights as guaranteed by the United States Constitution. The Board stated:

> The statute is silent on the implementation of the objectors' suggested draconian penalty against a party which fell short in its attempt to filed suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on

> the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it otherwise fulfilled all statutory requirements. The objectors have not directed the Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm. *See* pp. 47-48a, *infra.*

Likewise, the Board found that these constitutional principles directed a similar finding with respect to the "same name" objection. The Board stated:

> A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association.

See p. 40a, *infra.*

In the Circuit Court, both the candidates and the Board contended that the statutory interpretation suggested by the objectors would infringe on the candidates' and their supporters' constitutional rights. The candidates' petition for judicial review stated "it is unconstitutional to require the Harold Washington Party to gather more signatures to field county candidates than it would need to field a slate of candidates for statewide office [and] it is impermissible to impose geographic/minimum signature requirements." Petition for Judicial Review at 2-3, *Norman v. Kusper,* No. 90 CO 244 (Cir. Ct. Cook County, IL Sept. 20, 1990)

While the Circuit Court rested its decision on an interpretation of state law and expressly rejected the HWP candidates' constitutional arguments, those arguments went to the merit of the Circuit Court's eventual decision. The Circuit Court stated: "[The HWP candidates] suggest that §10-2's component aspect is unconstitutional. * * * This case is disposed of on other grounds. The constitutionality of §10-2 of the Election Code need not be addressed." See p. 24a, *infra.*

In the supreme court, the HWP candidates raised and the Electoral Board argued the same constitutional points.

The supreme court majority's order does not set forth the rationale or legal basis for the decision. However, the dissenting opinions manifest that federal constitutional issues were at the heart of the case, and that the removal of the HWP candidates infringed on constitutionally protected rights. In his dissent, Justice [now Chief Justice] Miller explained:

> The majority's result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979) 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, which invalidated, on constitutional grounds, an earlier provision in section 10-2 that effectively required a new party to present

> more signatures to run a candidate in the City of Chicago than statewide. The Majority's construction of the statute produces a similar disparity.

See p. 14a, *infra.*

Similarly, Justice Ryan's dissent explicitly recognized that the majority's "narrow and strict construction" impinged on the fundamental rights of the candidates, and that the applicable statutes must be construed liberally. Justice Ryan used the *Socialist Workers* rationale to support his position that the majority's decision impermissibly restricted constitutionally protected interests. See pp. 8-9a, *infra.*

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT BY PROHIBITING NEW POLITICAL PARTIES FROM EXPANDING FROM A CITY TO A COUNTY UNDER THE SAME NAME

The county HWP candidates sought to organize under the banner of a political party which had already achieved substantial support in the City of Chicago[10] but which had not yet had the opportunity to run in Cook County.[11] The supreme court majority removed the county HWP candidates because the use of the same name violated the statutory proscription against duplicating the names of "established" political parties.

Section 10-1, however, provides that such a local party is only "established" as to the community in which its candidates ran. Accordingly, the "same name" ban extends, by its terms, only to parties that are "established" in the same jurisdiction. Since the HWP was not established in Cook County, the use of the HWP by the countywide candidates was entirely proper.

The Illinois Supreme Court's interpretation of this "same name" rule not only restricts the candidates' constitutional rights, but also is unworkable. Under this construction, if a local party achieves support and becomes "established" in the City of Cairo, Illinois, the same party name may not be used by candidates seeking municipal

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[10] The HWP first ran candidates in the April, 1989 mayoral election. The results of the election were:

Richard M. Daley (D)	577,141	55.4%
Timothy C. Evans (HWP)	428,105	41.1%
Edward R. Vrdolyak (R)	33,998	3.5%

This level of support was, of course, sufficient to grant HWP equal status with the democratic and republican parties as to Chicago municipal elections. Mr. Evans testified before the Electoral Board that he authorized the county candidates to continue use of the party name.

[11] The first countywide election after Evans' mayoral bid was the November, 1990 election.

office in Chicago, 400 miles away.[12] Similarly, candidates would be faced with the daunting task of investigating the status of their party name in each of Illinois' 6,620 units of local government. Such a requirement obstructs the ability of the new parties to form, let alone grow. Under the supreme court's rationale, anyone could successfully challenge the new party simply by finding an established party somewhere in the state which bears or includes the name as the challenged new party.

The Electoral Board interpreted this provision as merely prohibiting the use of party names which were "established" as to the subdivision in which the prospective candidates were running. Since the HWP was only established within the City of Chicago, the Board saw no bar to the use of the party name countywide. Likewise, the dissenting justices correctly noted that the majority's interpretation of §10-5 led inexorably to a result directly at odds with the settled decisions of this Court. See pp. 8a, 14a, *infra.*

Article 10's labyrinthine array of obstacles to new party ballot access has been slowly eroded by a series of cases considered by this Court. Together, these cases have outlined the basic principles of liberal ballot access found at the heart of the claims considered in this case. *See Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173, 99 S.Ct. 983 (1979) (invalidating a requirement that city candidates obtain more signatures than statewide candidates); *Communist Party v. State Board of Elections,* 518 F.2d 517 (7th Cir. 1975), *cert denied,* 423 U.S. 986, 96 S.Ct. 394, 46 L.Ed.2d 303 (1975) (invalidating a requirement that statewide candidates must obtain no more than 13,000 of their 25,000 signatures from a single county); *Kusper v. Pontikes,* 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973) (invalidating a primary lock-out rule); *Moore v. Ogilvie,* 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969) (invalidating a requirement that 25,000 signatures for statewide candidates must include at least 200 from each of 50 counties).

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[12] In Illinois, candidates for municipal offices generally shun the labels of the nationally-established political parties by forming "local" parties such as the "Good Government Party". *See Arden v. Village of Oak Lawn,* 537 F. Supp. 181, 184, n. 8 (7th Cir. 1982). Candidates for legislative and county offices generally run as democrats or republicans.

In *Socialist Workers,* this Court struck down just one of Illinois' many restrictions on new party formation and established that "[b]y limiting the choices available to voters, the State impairs the voters' ability to express their political preferences * * * [V]oting is of the most fundamental significance under our constitutional structure." 99 S.Ct. at 990.

Restrictions on new party formation must be necessary to serve compelling state interests and be adopted through use of the least restrictive means to those ends. This Court has recognized that new parties have played an important role in the political development of the nation, and that overbroad restrictions on those parties jeopardize this highly protected form of political expression. *Id.*

The freedom to associate as a political party is fundamental. *Williams v. Rhodes,* 292 U.S. 23, 30-31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). When new party candidates are removed from the ballot because of special restrictions on those parties, the candidates' fundamental right to associate is called into question. These restrictions not only burden the rights of the candidates, but also those of their voter-supporters.[13] *Illinois State Board of Elections v. Socialist Workers Party,* 99 S.Ct. at 990 (1979).

Here, the petitioners urge the Court to rectify yet another injustice to third-party candidates. By refusing to permit authorized candidates to expand the mantle of their party into new jurisdictions, the Illinois court has thwarted any reasonable means through which Illinois new parties can achieve electoral access. (See Justice Miller's dissenting opinion at p. 13a, *infra.)*

The Board's decision honored the fundamental canon of statutory construction that ballot access statutes must be construed in a broad fashion to encourage candidacy rather than frustrate it. *Morrison v. Olson,* 487 U.S. 654, 682, 101 L.Ed.2d 569, 600, 108 S.Ct. 2597 (1988). The dissenting supreme court justices endorsed this judgment and preserved the candidates' rights, while also protecting the rights of the state to control ballot confusion.

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[13] All tolled, the HWP submitted about 44,000 signatures for its county, city and suburban candidates. See p. 49a, *infra.*

II

THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT BY DENYING BALLOT ACCESS TO OTHERWISE-QUALIFIED CANDIDATES MERELY BECAUSE THEIR RUNNING-MATES FAILED TO OBTAIN SUFFICIENT SIGNATURES FROM A PARTICULAR DISTRICT

Illinois law does not generally permit candidates to run alone under a new party label. Section 10-2 requires that if more than one office is up for election in a jurisdiction, the party must file a "complete slate" of nominees for all offices serving that jurisdiction.[14] Additionally, if the jurisdiction is one in which officers are to be elected at large and from wholly-contained districts, the party must also file a slate petition with self-contained "components" nominating candidates for all district offices. §10-2.

Mindful of these restrictions, the HWP fielded candidates for countywide offices, Cook County Commissioners elected from Chicago, Cook County Commissioners elected from the suburbs, and Commissioners of the Metropolitan Water Reclamation

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[14] Interestingly, established parties need not fill every available ballot position. For instance, in heavily democratic areas such as Chicago, the republican party's line on the ballot often simply states "No Candidate Filed". For an analysis of the new party "slate" requirement, see *Stevenson v. State Board of Elections,* 794 F.2d 1776 (7th Cir. 1986) (Easterbrook, J., concurring).

District[15]. It is undisputed that the petitions for suburban commissioners contained less than the requisite 25,000 signatures.

The Board did not consider whether the 25,000 requirement for suburban commissioners, coupled with the 25,000 requirement for city commissioners, resulted in a practical requirement of 50,000 signatures which would be at odds with the *Socialist Workers* holding. The anomaly is the result of the statute's hybrid system of setting a flat signature requirement for some offices and using a percentage-based formula for others. If the percentage-based formula were used for the component new party filing, the signatures of the components would add up to that needed for the area-wide candidates. See *Socialist Workers* at 99 S.Ct. 983 (Rehnquist, J., concurring) ("The courts having knocked out key panels in an otherwise symmetrical mosaic, it is not surprising that little sense can be made of what is left.")

In the November, 1986 election for suburban commissioner, 635,285 ballots were cast. Thus, the 25,000 signature requirement for suburban commissioner is only 3.9% of the votes cast, a threshold permissible under this Court's standards as set forth in *Jenness v. Fortson,* 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed. 2d 554 (1971) (upholding signature requirement equalling 5% of registered voters).

Just as the Election Code does not mandate such an absolute sanction for the duplication of a party name, neither does the statute demand such a penalty for failure to show support in another jurisdiction. Nonetheless, the Illinois Supreme Court majority narrowly interpreted the Election Code to strike the HWP county and city candidates merely because their running-mates did not demonstrate the required suburban support.

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[15] Although this component did not contain sufficient signatures to stand alone, the Board and Circuit Court found that the water district was not a "district" of Cook County as contemplated by § 10-2, and that this deficiency was not relevant to consideration of the remaining candidacies.

This construction ignores this Court's mandate in *Moore v. Ogilvie* and *Illinois State Board of Elections v. Socialist Workers Party,* and imposes the will of the voters of one small jurisdiction over the will of those in the large urban area. In effect, the decision below gives suburban voters a veto power over candidates running only in Chicago or countywide. Such geographic discrimination runs afoul of the principles established in *Moore v. Ogilvie,* 394 U.S. 814 (1969). In *Moore,* this Court held that Illinois' requirement that new parties present a total of 25,000 signatures distributed in groups of at least 200 from each of 50 counties, violated due process and equal protection. While signature requirements serve the important purpose of ensuring that the candidates seeking ballot status have "achieved a modicum of support" in the community, see *American Party of Texas v. White,* 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974), the numerical framework for this test must always comport with constitutional standards.

Presumably, the slate requirement encourages party identification and cohesiveness. While this is a permissible goal, it hardly can be justified in the framework of a new party which has yet to form. Even if the "complete slate" requirement is justifiable in some context, there is clearly no rationale supporting the result reached by the court below. The means chosen by the supreme court majority are not the "least drastic means" of advancing whatever state interest might be furthered by the slate requirement. Rather, they are quite severe, as they remove the candidates from the ballot and limit voter choice. *Richards v. Lavelle,* 620 F.2d 144 (7th Cir. 1980).

The dissenting justices correctly noted that the majority's decision "is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights." See p. 15a, *infra.*

III

THE QUESTIONS ARE NOT MOOT BECAUSE THE DECISION BELOW AFFECTS THE CONTINUED STATUS OF THE HAROLD WASHINGTON PARTY IN COOK COUNTY AND BECAUSE THE QUESTION IS CAPABLE OF REPETITION BUT MAY EVADE REVIEW

Even though the election has passed, the case is not moot. The HWP appeared on the ballot pursuant to this Court's stay order, and certain candidates received more than 5% of the vote.[16] The success of the HWP candidates entitles the party to "established" status in Cook County and the right to nominate its candidates by primary elections.[17]

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[16] Dorothy Hogan, the HWP candidate for Superintendent of the Educational Service Region of Cook County, led the party ticket with 15.4% of the countywide vote.

The HWP continues to support and field candidates for various offices. Unless the candidates and the Board obtain a judicial determination of their respective rights, this controversy is likely to repeat every two years.[18] Despite the expedited schedule in state court, this Court did not have the opportunity to consider the matter on the merits prior to the election. Because of the continuing impact of the decision below, the case is not moot and this Court should grant certiorari. *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705 (1973).

CONCLUSION

For these reasons, the petitioners pray that this Honorable Court grant a writ of certiorari to review the decision below.

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[17] Established party status permits HWP candidates to appear on the ballot with significantly fewer signatures than are required of new parties. For example, democratic candidates for county office needed only 6,520 signatures for the 1990 ballot, instead of the 25,000 required of new party candidates.

[18] In fact, it is likely to intensify. At the November, 1990 election, voters approved a binding referendum to elect Cook County commissioners from 17 single-member districts. See Ill.Const. transition schedule, §5(b). Under the supreme court's holding, new party candidates for countywide offices in 1994 will have to submit 17-component petitions naming commissioner candidates in each commissioner district.

Respectfully submitted,

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Of Counsel.

IN THE SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
vs.	)	No. 70833
	)	
BARBARA J. NORMAN et al.,	)	
	)	
Respondents-Appellants.	)	

ORDER

Upon Written Motion to Recall the Mandate of this Court of October 12, 1990, this Court hereby denies said Motion.

Filed: October 18, 1990

Supreme Court Clerk

IN THE
SUPREME COURT OF ILLINOIS
NO. 70833

DOROTHY REED et al.,)
)
Petitioners-Appellees,)
)
vs.)
)
BARBARA J. NORMAN et al.,)
)
Respondents-Appellants.)

ORDER

This case is before the court on an appeal and cross-appeal from a judgment of the circuit court of Cook County to this court, pursuant to our Rule 302(b) (107 Ill. 2d R. 302(b)). The briefs of the parties were submitted to the court. Because of the time limitation associated with the general election to be held in this State on November 6, 1991, the following order is entered by vote of a majority of the court, with an opinion to be filed at a later date:

The circuit court ruled that the holding of the Cook County officers electoral board that the Metropolitan Water Reclamation District Harold Washington Party candidates be removed from the ballot was correct. That ruling of the circuit court has not been challenged in this appeal. The ruling of the circuit court is therefore final and will not be considered in this order.

The Cook County officers electoral board held, and the circuit court, on review, affirmed the holding, that the petitioners' use of the name "Harold Washington Party" in the petition to form a new political party, pursuant to section 10-2 of the Election Code (Ill.Rev.Stat. 1989, ch. 46, par. 10-2), does not violate the provisions of section 10-5 of the Election Code (Ill.Rev.Stat. 1989, ch. 46, par. 10-5), which prohibits use of the name of an established political party (Ill.Rev.Stat. 1989, ch. 46, par. 10-1 *et seq.*). This court, by majority vote, holds that the petitioners use of the Harold Washington Party name in their petition did violate the provisions of section 10-5. Accordingly, the holding of the circuit court on this question is hereby reversed as erroneous.

The Cook County officers electoral board held, and the circuit court affirmed, that the City of Chicago and the suburban area of Cook County are two separate district from which officers are to be elected and that, under section 10-2 for the formation of a new political party, a separate component of the petition for each district must be circulated, and each component must be signed by 5% of the number of voters who voted at the last election to elect officers serving that district, not to exceed 25,000. The Circuit Court held that the component of the petition for the suburban district did not comply with the requirement of section 10-2 of the Code in this respect. By majority vote of this court, the holding of the circuit court is affirmed: that the component for the suburban district had an insufficient number of signatures for compliance with section 10-2 of the Election Code and that the names of the candidates listed and nominated for the suburban district thus did not qualify for placement on the ballot.

By majority vote of this court the further holdings of the circuit court are affirmed: that section 10-2 requires that a petition to form a new political party contain the above described number of signatures from all components of the petition, that is, from the components of Chicago and the suburbs; that because of this failure to comply with section 10-2 the names of all candidates listed and nominated according to the appellants' petition fail to qualify for placement on the ballot at the general election on November 6, 1990.

It will not be necessary to discuss other points raised on the appeal. It is noted, however, that, it appearing that R. Eugene Pincham, Sr., has been nominated as a Democratic Party candidate for the office of Cook County commissioner, that qualification and candidacy are of course not affected by this order.

It is further ordered by a majority of this court:

> (a) That any injunction or stay order heretofore issued, by either the circuit court of Cook county or the appellate court, relating to the appearance of the Harold Washington Party or its candidates on the ballot for the general election referred to above is vacated.
>
> (b) That the Cook County Clerk and the Chicago board of election commissioners shall proceed forthwith to

prepare and print ballots for the general election in accordance with the provisions of this order.

(c) That the mandate of this court shall issue immediately and without stay.

DATED this 12th day of October, 1990.

Moran, C.J., Ryan and Miller, JJ., dissenting.

IN THE
SUPREME COURT OF ILLINOIS
NO. 70833

DOROTHY REED et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
vs.	)	ORDER
	)	
BARBARA J. NORMAN et al.,	)	
	)	
Respondents-Appellants.	)	

JUSTICE RYAN dissenting:

I dissent from the order of the majority of this court, which denies the Harold Washington Party candidates access to the ballot. The order results from a needlessly narrow and strict construction of the Illinois Election Code and a construction which I see as wrong. I also join in Justice Miller's dissent.

In holding that the petitioners' use of the name Harold Washington Party violates the provisions of section 10-5 of the Election Code (Ill.Rev.Stat. 1989, ch. 46, par. 10-5), the majority of this court has focused primarily on the language of section 10-5 of the Election Code, which prohibits the use by a new political party of the name of an established party. However, section 10-5 does not just refer to an established party, but refers to an established party "as defined in this article". Section 10-2 of the

Election Code defines established party. These two sections of the Code, read together, support the conclusion that the petition before this court does not violate section 10-5, a position which I will explain in detail in a dissent I will write to the opinion the majority will file at a later date.

As to the provisions of the Election Code concerning the required number of signatures on a new party's petition, here again the majority of this court adopted a narrow and strict construction of the language of section 10-2. In fact, the provisions of section 10-2 are contradictory in this regard and the majority chose to adopt the language that would rule the Harold Washington Party candidates from suburban Cook County off the ballot instead of the language of that section which would have permitted them to remain on the ballot. The last sentence of the fourth paragraph of section 10-2 would limit the number of signatures required from all of Cook County to 25,000, whereas the next to the last sentence of the seventh paragraph of section 10-2 appears to require 25,000 signatures for each component of the county petition: that is, the City of Chicago and the suburban areas.

The last sentence of the seventh paragraph of section 10-2 does not require that the petition contain 25,000 signatures from all components, as the majority of this court holds. Instead, that sentence provides: "the entire petition, including all components," must be signed by the required number of signatures, so it is the entire petition that must have 25,000 signatures. If the statute would have said "including each component" instead of "including all components" there would have been some justification for the majority's holding that the component for the suburbs and the component from Chicago each have 25,000 signatures. In the next to the last sentence of the seventh paragraph the legislature referred to each component when it meant each. However, in the last sentence of that paragraph in speaking of the entire petition the legislature stated "including all components". A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures.

This construction is strongly supported by the last sentence of the fourth paragraph of section 10-2 to which I earlier referred. That sentence would require that the minimum number of signatures for all of Cook County be 25,000.

As noted below, this court should construe the Election Code liberally in favor of permitting the Harold Washington Party access to the ballot. The majority of this court has instead read the signature requirements narrowly and strictly and has ignored contradicting and limiting language of section 10-2 in order to find that he petition did not have the required number of signatures.

We are dealing with the fundamental rights. In *Illinois State Board of Elections v. Socialist Workers Party* (1979), 40 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, the Supreme Court stated that restrictions on access to the ballot burden two fundamental rights, the right of individuals to associate for advancement of political beliefs, and the right of qualified voters to cast their votes effectively. The court, in that case, also stated that even when pursuing a legitimate interest, a State may not choose means which unnecessarily restrict constitutionally protected interests.

In light of the holding in *Socialist Workers Party*, it is incumbent upon this court to avoid a narrow and strict construction of the Election Code, which denies the Harold Washington Party candidates access to the ballot. Instead, this court should apply a construction of those sections involved in this case which recognizes the fundamental rights involved, and which does not unnecessarily impinge upon those rights. Such a construction is logically possible by construing the sections involved together and liberally, and by not narrowly focusing solely on the limiting and restrictive language of specific sections.

In sum, since we are dealing here with fundamental rights, I believe it is incumbent upon this court to adopt the construction of the Election Code which will afford the Harold Washington Party candidates access to the ballot.

As to the majority's statement that the order of this court does not affect the candidacy of R. Eugene Pincham, Sr., as a candidate on the Democratic ticket, I do not dissent, because that issue was never briefed or argued in this court and was not decided in the circuit court, whose judgment we are reviewing. I do, however, strongly object to such an advisory opinion being contained in this order. That question may well be the issue in another lawsuit. Mr. Pincham was counsel for the Harold Washington

Party, petitioners in the proceedings below and in this court. I cannot understand why, after knocking the Harold Washington Party candidates off the ballot, the majority of this court finds it necessary to attempt to separate Mr. Pincham by gratuitously throwing him this morsel.

For the above reasons, I dissent.

CHIEF JUSTICE MORAN and JUSTICE MILLER join in this dissent.

IN THE
SUPREME COURT OF ILLINOIS
NO. 70833

DOROTHY REED et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
vs.	)	ORDER
	)	
BARBARA J. NORMAN et al.,	)	
	)	
Respondents-Appellants.	)	

JUSTICE MILLER, also dissenting:

By giving a cramped construction to several key provisions of the Election Code, today's decision nullifies without cause the efforts of the thousands of men and women who worked to place candidates of the Harold Washington Party on the November 1990 ballot in Cook County. I cannot concur in the court's disposition of the present matter, and I therefore join Justice Ryan's dissent and, in addition, write separately.

Section 10-5 of the Election Code bars a new political party from using the name "of any established political party as defined in this Article." (Ill.Rev.Stat. 1989, ch. 46, par. 10-5.) Under section 10-2, a political party may become established either on a statewide basis or in discrete districts or political subdivisions of the State. (Ill.Rev.Stat. 1989, ch. 46, par. 10-2.) A party becomes established on a statewide basis if its candidate for the office of governor receives more than 5% of the entire vote cast for that position. A party becomes established on other than a statewide basis if one of its candidates for office in a political subdivision or district, including a municipality, receives more than 5% of the entire vote cast within that area. In that instance, the party is established "as to such district or political subdivision." Ill.Rev.Stat. 1989, ch. 46, par. 10-2.

It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision" of the State but not in others. With respect to parties that are not established entities on a statewide basis, I would thus construe the statutory proscription on the use of an established party's name as extending only "as to such district or political subdivision: in which the party has been established under Article 10. Because the Harold Washington Party is an established entity only in the City of Chicago, Article 10 does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.

The purpose of the statutory limitation on the names that may be used by a new political party are to prevent a new party from gaining ballot access by unfairly piggybacking on the success of an established party and to avoid voter confusion. It is clear in the present case that the purposes of the legislation would not be undermined by allowing the county candidates to run under the Harold Washington Party name. Before the electoral board, Alderman Timothy Evans, the Harold Washington Party candidate for mayor in the April 1989 Chicago mayoral election, testified that the present candidates for county office were using the party name with his approval. It is certainly true that Alderman Evans would have no authority to consent to a violation of the plain language of the statute. As I have already explained, however, the county candidates' use of the name of the Harold Washington Party is not literally proscribed by the Election Code. Alderman Evans' testimony should be considered in determining whether the purpose of the statute are implicated in the present case, and his statements demonstrate that the county candidates were not taking unfair advantage of the party's showing in the earlier municipal election.

Indeed, the majority's decision will significantly burden efforts by a new party to expand on other than a statewide basis. It is no answer to suggest, as the objectors do, that a party seeking to slate candidates in a district or political subdivision in which it had not previously run may use the primary and caucus procedures contained in Article 7 of the Election Code. By their terms, those provisions are applicable only to political parties already established on either a statewide basis or in the particular district or political subdivision in which nomination is sought. (See Ill.Rev.Stat. 1989, ch. 46, par. 7-2) Thus, after today's decision, it is not clear how a new party may go about expanding from one district to another.

The majority also construes section 10-2 as requiring a new party to submit 25,000 signatures from both the city and suburban components of Cook County.

Under the majority's interpretation, a new political party fielding candidates in that county must therefore gather a total of 50,000 signatures in support of its slate or face disqualification of the entire ticket. Section 10-2 provides, however, that a party seeking to run on a statewide basis will never be required to submit more than 25,000 signatures. The majority's result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979), 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, which invalidated, on constitutional grounds an earlier provision in section 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The majority's construction of the statute produces a similar disparity. When statutory language is reasonably susceptible to several interpretations, a construction favoring its constitutionality will be preferred. (See *People v. Orth* (1988), 124 Ill.2d 326, 334; *Cronin v. Lindberg* (1976), 66 Ill.2d 47, 60; see also *Morrison v. Olson* (1988), 487 U.S. 654, 682, 101 L.Ed.2d 569, 600, 108 S.Ct. 2597, _____.) As the record in this case demonstrates, there are several narrower alternatives to the majority's interpretation of the provisions of section 10-2 pertaining to signature requirements. None of those alternatives would compel the harsh result of invalidating the entire ticket for the failure to present a total of 50,000 signatures for the combined components of the Cook County slate.

Finally, the court unnecessarily offers advice to Harold Washington Party candidate R. Eugene Pincham, Sr., that he may continue to run as a Democratic candidate for the position of county commissioner, for which he previously qualified through primary election. His eligibility to run as a candidate of that party is not at issue here. Pincham is well aware of his rights and obligations under the Election Code. He needs no instructions from the majority with respect to those matters.

The formation of political parties and the freedom to vote for candidates of one's choosing are fundamental rights under both the Federal and State Constitutions. (*Illinois State Board of Elections v. Socialist Workers Party* (1979), 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983; *Anderson v. Schneider* (1977), 67 Ill.2d 165.) The various provisions of the Election Code deserve a liberal construction so that those rights may be fulfilled. The court's decision in the present case is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights.

For the reasons stated, I respectfully dissent.

CHIEF JUSTICE MORAN and JUSTICE RYAN join in this dissent.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

Barbara J. Norman, Janice H.)
Robinson, Donald Pamon,)
Heldia Richardson, Tommy)
Brewer, Charles W. Alexander,)
Dorothy C. Hogan, Will)
Lawrence, Kenneth G. Hopkins,)
R. Eugene Pincham, Robert E.)
Pincham, Jr., Percy V. Coleman,)
Vivian D. Stewart-Tyler, James)
Deanes, Dino F. McNeal, Mary)
King Criss, David T. Persons,)
Helen E. Jones, Robert E.)
Brooks, Jr., Mello Sam H.)
Clora, Judy Marie Hawthorne,)
Chester LeSure, Celia Duncan,)
Don D. Passmore, Jr. and)
Bobbie B. Smith)
)
Petitioners) No. 90 CO 00238
) No. 90 CO 00244
)
-VS-)
)
Stanley T. Kusper, Jr.,)
Aurelia Pucinski)

and Ernesto D. Borges)
Constituting the Cook County)
Officers Electoral Board;)
and Dorothy Reed,)
Valerie A. Sutton, Patton L.)
Feichter, Ervin S. Ricks,)
David Barrera)
)
Respondents)

ORDER

This consolidated cause coming to be heard on petition for judicial review from an order of the Electoral Board filed August 29, 1990. Harold Washington Party filed candidates for County Board President, Assessor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Service Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Seven separate findings were made by the Board:

1. The Electoral board was legally constituted.
2. The objections were filed on time.
3. Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.
4. Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County board President.

5. The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.
6. Objector did not offer sufficient proof to warrant a binder check.
7. Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of county candidates pursuant to the election code.

The following Board rulings are in dispute:

1. Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.
2. Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County Board President.
3. The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.
4. Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of candidates pursuant to the election code.

RULINGS

I. As to the use of the name Harold Washington Party this court, on other grounds, affirms the decision of the Board. This court reasons as follows:

A.) The Harold Washington party became an established political party in Chicago pursuant to 10-2 of the Election Code at the time of the April, 1989 Mayoral Election.

B.) While Timothy C. Evans was the only candidate of the Harold Washington Party, his only power, pursuant to §10-2 of the Election Code, was the ability to appoint interim committeemen.

C.) Section 10-2 states as follows:

> A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area of political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial subdivision, is hereby declared to be an

> **"established political party" within the meaning of this article as to such district or political subdivision.** (emphasis added)

D.) For the purpose of determining a party's status as an established political party, within the meaning of §10-2 of the Election Code, this court recognizes that the City of Chicago and the County of Cook are separate political subdivisions.

E.) County Commissioners are County officers. Since the Harold Washington Party was an established political party only in the political subdivision that is the City of Chicago, only the candidates for city officers are prohibited by §10-5 of the Election Code from running as a new political party within the City of Chicago. Section 10-5 of the Election Code states that "Such party shall not bear the same name as, nor include the name of any established political party."

F.) §7-4 (6) of the Election Code defines "County Office" as "an office to be filled by the qualified electors of the entire county." These County Commissioners are not being voted on by citizens of the entire county, some being voted in by city voters and some by suburban voters only. This provisions also states that "County office also includes the Assessor and Board of Appeals and County Commissioners and President of the County Board of Cook County and County Board Members..." Since County Commissioner is specifically defined as a "county office," the establishment of the Harold Washington Party in the City of Chicago is irrelevant to the election at issue. (Emphasis added)

G.) Under this construction of §10-2 of the Election Code, one may expand an established political party from one political subdivision to another merely by complying with the new political party requirements of §10-2. Construing §10-2 as written limits the application of §10-5, which deals with the concepts of party stealing and voter confusion. It is not the function of this court to legislate. The legislature may, if it sees fit, re-draft these sections to address these concerns.

II. The court finds that the Board properly ruled that the suburbs are a separate component of Cook County under §10-2 of the Election Code. This statute requires that the new party obtain an appropriate number of signatures in each ballot. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the voters in the political subdivision or a number equivalent to 1%

of the voters in the State of Illinois, not to exceed 25,000. The Board's ruling as to the exclusion of candidates for County Commissioner from the suburbs was correct.

III. The Board's inclusion on the ballot of candidates for County Commissioner from the city was incorrect.

A. This Court finds that §10-2 of the Election Code states as follows:

> In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. ...**Each component** of the petition for **each district** from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, **including all components**, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than

5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large.

B. The failure to obtain 5% support or 25,000 signatures for the suburban County Commissioner candidates voids the entire slate of Cook County candidates of the Harold Washington Party petition for two reasons.

1. It fails to comply with §10-2 of the Election Code's requirements of 5% or 25,000 signatures **from all components**.

2. Non-compliance with the suburban component is a failure to file a complete County slate.

    a. Anderson v. Schneider, 67 Ill.2d 165, 176, 365 N.E.2d. 900, 904, (1977), states that the complete slate requirements of §10-2 of the Election Code confers no authority for the removal of all the candidates because one is qualified.

b. In the case at bar, the entire slate of suburban Cook County Commissioners were unqualified. **Anderson** is inapposite to these facts.

IV. Cross-appellants suggest that §10-2's component is unconstitutional. An Amicus Curiae brief was filed on behalf of the Independent Voters of Illinois-Independent Precinct Organization. A reviewing of court will decide a constitutional question only where it is essential to the disposition of the case. In re Application of the County Collector of Kane County for Judgement for Delinquent Taxes for the Year 1985, 172 Ill.App.3d 897, 122 Ill.Dec. 769, 527 N.E.2d 141 (2d Dist. 1988); citing Bender v. City of Chicago, 58 Ill.2d 284, 287, 319 N.E. 2d 34 (1974). This case is disposed of on other grounds. The constitutionality of §10-2 of the Election Code need not be addressed.

V. This court finds that the Board's ruling as to the exclusion of Metropolitan Water Reclamation District candidates was correct, but for the wrong reasons.

A. The Board ruled that the Metropolitan

Water Reclamation District was a separate "component" of Cook County under §10-2 of the Election Code.

B. The court finds that, under §10-2 of the Election Code, the Metropolitan Water Reclamation District is a separate political subdivision and not a component of Cook County, as was held by the Board.

C. Political subdivision is defined as "any unit of local government in which elections are or may be held." Ill.Rev. Stat. ch. 46 §1-3 (6).

D. Since the Metropolitan Water Reclamation District and Cook County are separate units of local government, they are distinct political subdivisions.

E. Section 10-2 of the Election Code requires a new political party to obtain signatures of 5% of the voters or a number equivalent to 1% of the voters in the State of Illinois, not to exceed 25,000. The Harold Washington Party failed to obtain the requisite signatures for the Metropolitan Water Reclamation District, making exclusion from the ballot proper.

F. It should be noted that failure to garner the appropriate voter support in the Metropolitan Water Reclamation District has no effect on the complete slate of Cook County candidates. Section 10-2 requires the filing of a complete slate "for all offices to be filled in the ...political subdivision." The slate in the political subdivision of Cook County is complete without the addition of candidates from the political subdivision of the Metropolitan Water Reclamation District. (emphasis added)

VI. As to the issue of whether a failure to include judicial candidates on the Cook County slate was a failure to file a complete slate, this court overrules the Board as follows:

A. That §10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each district contained in that subdivision from which an officer is to be elected.

B. §1-3 (14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits."

C. §10-2 of the Election Code requires a list of candidates for "all offices to be filled in the political subdivision at large." Judges to be elected in the Cook County Judicial Circuit are such officers.

D. That the exclusion of judicial candidates on the slate was a failure to fulfill the "complete slate requirement" of the Election Code. This failure completely invalidates the petition.

VII. The court affirms the Board's holding that the party switching of R. Eugene Pincham, Sr. did not violate §10-2 of the Election Code. Due to the deficiencies stated above, which invalidates the Harold Washington Party petition, Mr. Pincham may not run as a Harold Washington Party candidate.

VIII. Cross-appellant alleges that there was fraud in objections five and six of the objectors' petition. There was insufficient evidence to established a prima facie case for such fraud.

IT IS THEREFORE ORDERED:

1. That the challenged rulings of the electoral board are hereby reversed in so far as they are inconsistent with this opinion.

2. That the Cook County and Chicago Board of Election Commissioners are hereby enjoined from printing the name of Harold Washington Party of the names of any candidates thereof, either with the designation of the Harold Washington Party or without any party designation on the

general election ballot for the election to be held on November 6, 1990.

3. That the Electoral Board shall forthwith issue an amended Electoral Board decision in accordance with the rulings herein.

4. That the prior order of September 14, 1990 enjoining the Cook County Clerk and Chicago Board of Elections Commissioners from printing ballots for the November 6, 1990 general election and is hereby vacated.

5. That this order is final and appealable.

ENTERED:

September 22, 1990
Date

/s/ Eugene L. Wachowski

Hon. Eugene L. Wachowski

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD FOR THE HEARINGS AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO OFFICES FROM DISTRICTS OR DIVISIONS WHICH ARE COTERMINOUS WITH OR LESS THAN THE COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTIONS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS;

INSIDE THE CITY OF CHICAGO

R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. MCNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES;

OUTSIDE THE CITY OF CHICAGO

ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., BOBBIE J. SMITH

DECISION

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE STANLEY T. KUSPER, JR., HONORABLE AURELIA PUCINSKI and HONORABLE ERNESTO D. BORGES, public member, replacing the HONORABLE CECIL A. PARTEE, organized by law in response to a Call issued by the HONORABLE STANLEY T. KUSPER, JR., Chairman of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates for nomination to County-Wide Offices and to the Office of Cook County Commissioner from Chicago and from outside the City of Chicago having convened on August 14, 1990 in room 569 of the Cook County Building, in the City of Chicago, County of Cook and State of Illinois, and having heard and determined the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nomination papers of the candidate herein were duly filed;

3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate by mail and

by personal service as provided by statute;

4. A public hearing was held on these objections on August 14, 1990, and subsequent dates;

5. There were present at such hearings the following persons, among others:

   a) Honorable Stanley T. Kusper, Jr., Chairman; Honorable Aurelia Pucinski, Member and Honorable Ernesto D. Borges, Member;

   b) the objectors, by their counsel;

   c) the party and its candidates, by their counsel;

6. All evidence, if any, that was tendered by those appearing at the hearing was heard and considered by the Board;

7. All arguments, if any, that were made at the hearing were considered by the Board;

8. The Board, having heard oral argument and, considering the legal memoranda and all other evidence presented, hereby makes the findings contained in the attached Opinion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Objections to the nomination papers of the HAROLD WASHINGTON PARTY, for nomination of its candidates to County-Wide Offices, and for its candidates to COOK COUNTY COMMISSIONER inside the City of Chicago, are hereby DENIED and as to the party and its candidates for Cook County Commissioners outside the City of Chicago is GRANTED, in conformity with the findings attached hereto and made a part hereof.

DATED at Chicago, Illinois this 29th day of August, 1990.

/s/ Stanley T. Kusper, Jr.
STANLEY T. KUSPER, JR., Chairman

/s/ Ernesto D. Borges, Jr.
ERNESTO D. BORGES, Public Member

Concurring in Part and Dissenting in Part:

/s/ Aurelia M. Pucinski
AURELIA M. PUCINSKI, Member

COOK COUNTY OFFICERS ELECTORAL BOARD CONSOLIDATED OPINION

BACKGROUND

These cases concern objections to various petitions filed by candidates of the Harold Washington Party for election at the November, 1990 General Election. The Harold Washington Party ("HWP") filed as a "new" political party under the provisions of Article 10 of the

Election Code.[1] HWP filed candidates for County Board President, Assessor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Service Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Dorothy Reed, Valerie Sutton, Patton Feichter, Ervin Ricks and David Barrera filed objections to these candidates pursuant to §10-8, charging that the HWP petitions lacked the requisite number of signatures and that they otherwise failed to meet the constraints of Article 10.

This Board is constituted of the County Clerk, who serves as Chairman; the Clerk of the Circuit Court and the State's Attorney or an Assistant State's Attorney designated by him. Because the incumbent State's Attorney, Cecil Partee, would be running against Janice H. Robinson, a challenged HWP candidate, Partee recused himself from the Board, as required by §10-9. The statutorily authorized substitute members, Treasurer Edward Rosewell and Sheriff James O'Grady, are also candidates for re-election and were likewise disqualified. The Chief Judge of the Circuit Court, the Honorable Harry Comerford, then appointed attorney Ernesto D. Borges, Jr. as a public member of the Electoral Board.

The Board met on August 14, 1990, and thereafter to consider the objections. Since most of the objections were of a legal, rather than factual, nature, they were determined by the Board's decisions on the candidates' motions to dismiss. The Board made oral rulings on some of these issues as they were presented on a daily basis. Due to the likelihood these cases will be appealed on judicial review, and because some of the issues raised represent new advances in electoral jurisprudence, we have issued this opinion detailing the Board's reasoning for these rulings.

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[1] Unless otherwise specified, all statutory references are to the Illinois Election Code, Ill.Rev.Stat. (1989) ch. 46.

I

DISQUALIFICATION OF THE ELECTORAL BOARD

The HWP first suggests that the Board should be disqualified because its members are "interested" in the litigation.[2] In support of this motion, HWP submitted an unverified document labeled "Respondent Harold Washington Party's Objection to the Composition of the Electorial [sic] Board for [sic] Cook County." The objection names various democratic officials who, it is alleged, oppose the HWP. The objection feebly attempts to link two members of the Board, who are elected democratic officials, with the anti-HWP comments of these officials. The objections conclude with a one-sentence declaration that "It is axiomatic that fundamental Due Process and Equal Protection are denied petitioners[3] because the County Officers Electorial [sic] Board and it's [sic] members are interested parties in the instant litigation." The HWP does not direct the Board's attention to any relevant case law or legal authority to support this claim.[4]

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[2] HWP asked the Board to transfer this cause to the State Board of Elections. There is no statutory authority to transfer an action that, pursuant to the Election Code, must be heard before this Board.

[3] [Footnote by the Board]. The Board presumes that the word "Petitioners" is meant to refer to the HWP candidates, who are actually

The Board is acutely cognizant of the serious nature of the objections and the great public interest in them. The Board is, as always, aware of its sworn duty to uphold the law and constitutions of the United States and State of Illinois.

However, the statutes clearly designate certain officials as members of the Electoral Board. Section 10-9 permits a board member to step down in circumstances where "any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed". That statute also provides for substitution of the dismissed member.

This issue was raised in *Ryan v. Landek*, 111 Ill.Dec. 97, 512 N.E.2d 1 (1987). In *Ryan*, the Board contained persons who were running on the same new party slate as the candidate. The Appellate Court held, although a majority of the Board were party members, the composition of the Board did not deny the objector due process, since judicial review of the Board's decision was

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respondents in this litigation.

[4] Moreover, in these circumstances, the right to an impartial judge implicates only the right to due process of the law, rather than equal protection.

readily available, and since the legislature failed to provide for recusal of members for any reason other than that specified in the statute.

The *Ryan* board contained persons who were actually running on the same new party slate as some of the litigants. This Board contains no such persons, and the link urged by HWP is considerably more tenuous than the link of the *Ryan* Board to the litigants, which was found not to violate the candidates' due process rights. Thus, the HWP's motion to disqualify the Board is denied.

II

TIMELINESS OF FILING OF THE OBJECTIONS

The HWP next moved to strike and dismiss the objections on the basis that they were not timely filed. It is well settled that absent a timely-filed objection, the nomination papers are presumed valid and the candidates' names shall appear on the ballot. §10-8.

Section 10-8 specifies that the objections must be made in writing within five business days after the last day for filing the nominating papers. The HWP filed their petitions on the last possible day, Monday, August 6, 1990. HWP contends that five business days after August 6 was Saturday, August 11, 1990. The objections were not filed until Monday, August 13.

In support of its position, HWP cites *Mierswa v. Kusper,* 121 Ill.App.3d 430 (1st Dist. 1984). Mierswa filed her objections on the Monday following the Clerk's administratively set Saturday deadline. The Clerk refused to convene the Electoral Board to hear her objections, contending that the objections were not timely filed since his office was open on Saturday. Mierswa prayed for a writ of mandamus commanding the Clerk to convene the Board to hear her objections. The Appellate Court found that the objections were not timely filed, since the Clerk was required by law to keep his office open to noon on Saturday--precisely the position urged by the HWP here.

However, *Mierswa's* reach has been limited by a legislative response to this commonly-litigated scheduling quandary. Just last year, the General Assembly passed Public Act 86-873, which defines "business day" as "any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minimum of 7 hours." That Act also clarified the computation of the time for election activities by specifying that if the last day for doing an act required under the Election Code falls on a Saturday, the deadline moves to the following Monday.[5] §1-5. Since the Clerk was not open for 7 hours on August 11, 1990, but was open for 8 hours on August 13, the last day for filing objections to the HWP petitions was August 13.[6] HWP's motion to dismiss for failure to file the objections on time is denied.

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[5] Assuming, of course, that the Monday is not a holiday.

[6] We also note that the election calendars published by the Chicago Board of Election Commissioners, the Cook County Clerk and the State Board of Elections all designate August 13 as the last day for filing objections.

III

USE OF THE NAME "HAROLD WASHINGTON PARTY"

The objectors claim that the candidates cannot use the name "Harold Washington Party" because it is an established political party in the City of Chicago. This objection is made against all petitions filed by the HWP for county, city, suburban and Water Reclamation District offices.

The Board takes administrative notice of the fact that Timothy C. Evans formed the Harold Washington Party for his candidacy for Mayor of Chicago in 1989, and that Evans received more than 5% of the vote in his unsuccessful effort. Thus, pursuant to §10-2, the Harold Washington Party became, and is presently, an established political party in the City of Chicago.[7]

Section 10-5 prohibits new political party petitions for nomination from bearing the same name as, or including the name of, any established political party as defined in Article 10. The obvious purpose behind this prohibition is to prevent persons who are not affiliated with a party from "latching on" to the popular party name, thereby promoting voter confusion and denigrating party cohesiveness.

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[7] The Board notes that the municipality, the City of Chicago, is territorially different from the Cook County Board District consisting of that part of Cook County lying within Chicago (Ill.Const. (1970) Art. VII, § 3(c).) The City of Chicago includes territory within DuPage County. However, for the Board's purposes, the distinction is not relevant.

When the HWP became established in the City of Chicago, Evans, as the candidate of the party, was eligible to select party committeemen as were "necessary for the creation of a provisional party organization and provisional managing committee of the party." §10-2. These committeemen serve until the next primary election at which established political party committeemen are elected.[8] Evans testified that he has not as yet, appointed any such committeemen, but that he, as candidate, authorized the HWP candidates to use the party name.[9]

The Board believes that the purposes of the statute, to stop "party stealing", and confusion are important ones. The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the "new political party" in the County, named the HWP. A question that needed to be resolved was whether the new HWP was one in the same as the Chicago HWP involving the same people. Further, the Board finds that the prohibition of §10-5 does extend to the county HWP candidates now before this Board, since the HWP is an established party as defined by Article 10.[10] A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association. Balancing the candidates' rights against those of the state in ensuring the integrity of the electoral process required the Board to inquire as to the legitimacy of the connection between the county HWP and the established Chicago HWP.

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[8] In fact, several persons attempted to run as HWP ward committeeman candidates in the 1990 primary. Objections were filed to their candidacies by no less than Mr. Evans, who contended that ward committeemen could only be elected in the next "presidential" election year, or 1992. The Appellate Court agreed, and the candidates were stricken from the 1990 ballot.

[9] The Board specifically finds that Evans, pursuant to §10-2 has no authority to act as *Chairman* of the HWP since there is no statutory authority for such designation until committeemen are appointed or elected and then elect a Chairman to lead the newly established political party.

Evans testified that the County HWP was granted permission by him (as the only candidate of the Chicago HWP party) to use the party name as an "official" branch of the Chicago HWP. Although Evans is not the statutory party chairman he is the only person empowered by the Election Code to act in any official capacity for the HWP.

We find that Evans' testimony was credible and uncontroverted, and although Evans is not the statutory chairman of the HWP, he is the only person at this point in time, allowed to act as specified above for the party. Evans testified that he gave permission for use of the name prior to the county HWP petitions being circulated and is the only person to testify in these regards.

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[10] However, Chairman Kusper believes the 10-5 prohibition does not extend to the newly formed HWP since it is forming "Countywide" and not within the same political subdivision (City of Chicago) as the established HWP.

The objectors' reliance on *Ballentine v. Bardwell,* 132 Ill.App.3d 1033, and *Doty v. REP Party,* 97 Ill.App.3d 316 is misplaced. In neither case was the new political party which adopted the name of an established party merely an expansion of the existing party into a different jurisdiction. In each case, the new party was attempting to form in the same jurisdiction as the existing party. Here, the evidence demonstrates that it is the same HWP which is reaching out to expand into new political territory. Since the purpose of the statute is to protect the existing party and its supporters against non-supporters from borrowing its goodwill, the statute has no bearing here.

We have considered the affidavits of Nancy Jefferson and David Reid and find them to be of no evidentiary value, since neither person was a candidate or official of the HWP as designated by statute.[11]

Thus, the motion to dismiss the objection that the name "Harold Washington Party" could not be used by the candidates, is granted.

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[11] State statutory restrictions on political party organization are suspect as they unduly burden the party members' freedom of association rights. *San Francisco County Democratic Committee v. Eu,* 826 F.2d 814 (9th Cir. 1987), aff'd, 109 S.Ct. 1013 (1989). However, Illinois grants these party officials certain public authority, thus legitimizing the minimal structural framework established by Articles 7 and 10 of the Election Code. *Kluk v. Lang,* 125 Ill.2d 306 (1989).

IV

THE DUAL CANDIDACY OF R. EUGENE PINCHAM, SR.

R. Eugene Pincham, Sr. is a former Circuit and Appellate Court judge who resigned from the court to run for President of the Cook County Board in the March, 1990 democratic primary. Pincham ran also for Cook County Commissioner to be elected from inside Chicago.[12] Pincham lost for President to Richard Phelan, but did win one of the ten nominations for a Chicago board seat.

Pincham is now running for Cook County Commissioner as a candidate of the HWP.[13] Section 10-2 of the Code states:

> A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as a

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[12] A dual candidacy for President and Commissioner is expressly permitted by Ill.Const. (1970) Art. VII, § 4(b).

[13] We decline to speculate on the legal effect of Pincham's simultaneous candidacy for the same office on two different party tickets, a practice seldom seen in American politics (except in the State of New York) and unprecedented in Illinois. We note that the objectors merely charged that the "sore loser" clause of §10-2 prevented Pincham from running as a new party candidate.

> candidate of a new political party for election in that general election.

The objectors charge that since Pincham lost his bid for President, he is barred from running for Commissioner. At first glance, the statute indeed appears to prohibit party-switching between the primary and general elections. However, the statute is commonly referred to as a "sore loser" statute,[14] and was enacted in response to the activities of John Nimrod, an incumbent republican state senator who lost the 1982 primary and ran undaunted to keep his senatorial seat as the candidate of the "Taxpayers for Nimrod" party. The state may constitutionally prevent a candidate from having more than one bite at the same apple. It may also constrain one's political activities to one political party for one season. Whether Illinois law prevents Pincham, under these unusual circumstances, from running for Commissioner as a HWP candidate, is the question faced by this Board.

Pincham won his primary for county commissioner and now wishes to switch parties. The statutes contain no prohibition against such conduct.[15] In our view, Pincham's loss for President should not bar him from seeking a commissionership under the HWP label. The language of the statue specifically refers to one who is defeated for "his or her nomination" at the primary, lending credence to HWP's argument that the statute is meant only to "lock-out" the sore loser from running for the precise office he lost at the primary. The legislative history of the statute supports this conclusion as well. Finally, we note that when an election law is unclear, the benefit of the doubt must be given to the candidate. *Merz v. Volberding,* 94 Ill.App.2d 111 (1981). If the legislature had meant to prohibit party switching in the unusual manner used here, it could have done so with language sufficiently clear to put the candidate on notice of the activities which are prohibited. Pincham won his nomination for county commissioner. The statutory language regarding a candidate who is defeated thus only would apply to his loss for President. We find that his past candidacy for President is not relevant to the sore loser statute and that it is thus not a bar to his candidacy.

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[14] For an exhaustive constitutional analysis of "sore loser" statutes and "party switching" prohibitions, see *Citizens for Moore v. Chicago Board of Election Commissioners,* 599 F.Supp. 662, *question certified* 781 F.2d 581, *certified question declined to be answered* 94 Ill.Dec. 69, *opinion after certified question declined* 794 F.2d 1254, *on remand*, 665 F.Supp. 1334, *aff'd*, 845 F.2d 144 (1989).

Thus, HWP's motion to dismiss the objection to Pincham's candidacy on this ground is granted.

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[15] In fact, this is precisely what Adlai Stevenson did in 1986, when he withdrew as the democratic nominee for Governor and ran under the Illinois Solidarity party label.

V

THE MINIMUM SIGNATURE REQUIREMENTS

Since HWP desired to run candidates not only for county-wide offices but for county commissioners from the two county board districts as well, and for Commissioners of the Metropolitan Water Reclamation District, it utilized the "component" form of nominating petition. Section 10-2 requires that such petition consist of separate components for each district from which an officer is to be elected. Each component must be circulated only within a district of the political subdivision involved and signed by electors who reside therein. Further, each sheet of the petition must contain a complete list of the candidates for the at large positions and those from the particular district. Each district component must contain the signatures of not less than 5% of the voters who voted at the next preceding regular election in the jurisdiction[16]. Further, the entire petition for County-Wide Candidate must be signed by not less than 5% of the voters who voted at the next preceding regular election in the entire jurisdiction.

In a large county such as Cook, this 5% signature requirement works out to be considerably larger than that required of statewide candidates.[17] Such an illogical scheme was struck down in *Socialist Workers Party v. Board of Elections,* 440 U.S. 173 (1989). In response to that decision, the legislature amended §10-2 to provide that if the local requirement exceeds the state requirement, the latter will govern, and local candidates need only collect what is required of the state candidates. Here, that means that the HWP candidates needed 25,000 signatures on each component and a total of 25,000 for their county candidates.

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[16] In this case, that is the November, 1988 election for county offices.

[17] That requirement is 1% of the statewide voters, or 25,000, whichever is less. For this election, the 25,000 figure is less and is thus

HWP filed approximately 44,000 signatures on the county/city petitions and only approximately 7,800 on the county/suburban component. The candidates for Commissioner of the Metropolitan Water Reclamation District had approximately 8,000 signatures on their component. While the 44,000 signatures on the county/city component is sufficient alone to support both the city candidates and the county candidates, the objectors charge that the failure to include enough suburban signatures on the suburban component is fatal not only to the suburban candidates but to the rest of the ticket as well.

HWP responds by requesting that the Board count the excess city signatures toward the suburban total. The Board cannot do this, since the city signers did not petition to nominate the suburban candidates. Only persons residing in the suburbs may nominate those candidates. HWP also urges the Board to find the suburban petitions valid because the 7,800 signatures

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applicable.

demonstrate the "modicum of support" required by case law. The Board finds that the 25,000 signature requirement for suburban candidates is appropriate, since there are over 1,000,000 voters in suburban Cook County, and since the HWP candidates were not tested in a primary election.[18] The fact that 44,000 signatures were collected in Chicago, which only has slightly more voters than suburban Cook, supports the Board's position that the 25,000 suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction, a fact which the HWP has not shown.[19]

We further find that the deletion of the suburban component and/or the Metropolitan Water Reclamation District component is not fatal to the remainder of the ticket. The statute is silent on the implementation of the objector's suggested draconian penalty against a party which fell short in it's attempt to field suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it otherwise fulfilled all statutory requirements. The objectors have not directed the

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[18] The signature requirements for new political parties are significantly higher than for established parties, because new parties automatically gain a place on the general election ballot for which the established candidate had to fight in a primary.

[19] Further, the Electoral Board has no statutory authority to alter or vary from the minimum signature requirement as set forth in the Election Code. The question of what is a minimum showing of support (if 25,000 is too much) reposes in a court of competent jurisdiction.

Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm.

The motion of the objector to find the nomination papers of Robert E. Brooks, Jr., Mello Sam H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr. and Bobbie J. Smith as candidates for the Cook County Board of Commissioners to be elected from outside the City of Chicago insufficient is sustained. The Board grants the motion of the HWP to strike and dismiss the objection that the remainder of the slate must fall along with the suburban candidates.[20]

Further, as noted above, the HWP candidates for the Metropolitan Water Reclamation District failed to file the 25,000 required signatures. The MWRD petitions contain only about 8,000 signatures on their face. Assuming that the MWRD is includable in the "component" petitions described above, the same analysis applies as did for the insufficient suburban signatures. Since the petitions demonstrate on their face the candidates' failure to meet the statutory requirement, the objector's motion to find the nomination papers of Jeffrey V. Coleman, Belgee L. Faulkner and Darnell Fourte insufficient is sustained.[21]

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[20] In *Anderson v. Schneider*, 167 Ill.2d 165 (1977), the Supreme Court allowed the entire slate of township candidates and the party name to remain on the ballot after one of the members of the slate was removed by an Electoral Board. Justice Dooley, writing for the majority, found that the sanction of removal of the party name and/or candidates was not necessary to protect the integrity of the electoral process.

VI

ALLEGATIONS AS TO SPECIFIC SIGNATURES (THE "BINDER CHECK")

Having determined that the MWRD and suburban petitions fail to contain a sufficient number of valid signatures, we turn to the remaining city/county petitions.

The objectors filed objections to all 44,000 city/county HWP signatures on the basis that the signatures were not signed in the voters' own proper persons and that the signers were not duly registered voters. The objectors filed 6,000 appendix-recapitulation sheets corresponding to the sheets of the HWP petitions, on which an "X" was marked in each box corresponding to those allegations. In fact, the Board finds from the evidence presented that the Appendix-Recapitulation sheets were photocopies from a "master sheet."

The objectors' contention that **every one** of the signatures filed by the HWP was invalid strains credulity.

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[21] The attorney for the objector withdrew the allegations which relate to the insufficiency of individual signatures.

Even in the most blatant cases of petition fraud[22], some signatures will be valid. The candidates themselves can be presumed to have signed their own petitions.

The statute governing this Board provides that the objector's petition shall "state fully" the nature of the objection. The Electoral Board then must take up the question as to whether the petitions are in proper form. The Board has the power to subpoena witnesses or evidence, and the Chairman must issue subpoenas upon request of any party for the production of relevant documents or persons. The statute explains in detail how the subpoena is enforced in cases of non-compliance.

The Board also must adopt rules of procedure governing the introduction of evidence. This Board's long-established rules provide that a "binder check" may be conducted to determine the validity of allegations such as forged signatures or non-registered signers. The binder check takes place at the office of the election official having custody of the relevant governmental records, and each side may monitor the election clerk's review of the materials and report to the board as to the validity of the objections. The parties may then present additional evidence to the Board to refute the clerk's suggested findings.

The binder check procedure is a convenient way of disposing of numerous individual objections while permitting the Board to hear other matters in a limited time frame. It exists only because of the cooperation of the Cook County Clerk and the Chicago Board of Election Commissioners, neither of which is obliged to devote its staffs to such activities at the request of this Board. Both agencies have traditionally cooperated in binder checks because the procedure is a more efficient way to dispose of the objections than by subpoenaing the documents individually for inspection by the Board.

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[22] This Board is well-versed in identification of such schemes. *See, e.g., Canter v. Cook County Officers Electoral Board,* 170 Ill.App.3d 364 (1988).

However, this Board has hesitated to make the binder check procedure into a "fishing expedition" for objectors who have failed to do their homework.[23] The statutory scheme provides that the candidates' nomination papers are deemed valid unless proved otherwise. The Board has declined to use its discretion to order a binder check when the Board believes that the objections may have not been compiled with the requisite degree of care or precision.[24] The Board understands that even the most carefully-researched objections will often prove untrue. However, the Board must hold the objector to some standard or burden of proof so that the candidates are not improperly burdened with having to defend against these "fishing expeditions".

The HWP moved to dismiss the signature

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[23] Member Pucinski, although concurring in this part of the decision, additionally feels a stricter rule should be considered in the future requiring a higher standard of proof necessary to allow a binder check.

[24] *See, e.g., Objections of Jessie B. Hoskins to the Nominating Papers of Cardiss Collins*, 85-COEB-RC-3.

allegations on the basis that they were fraudulent. The Board noted the extensive nature of the objections and the apparent similarity to all the objections, along with the fact that every single name was objected to for the same reasons. Consequently, the Board ordered that an evidentiary hearing be held to demonstrate how the objections were researched.

The objectors' petition states that a 15% sampling was done of the HWP petitions, resulting in 53% of those signatures being invalid. In fact, there are no provisions for sampling certain signatures and then expanding a "likely" result from the sampling. The evidence presented by the objectors was insufficient for the Board to find a reasonable likelihood that a binder check or other manner of extensive evidentiary hearing would bring HWP below the 25,000 requirement.

The objectors' only witness on this point was Mrs. Bonnie McGuire, an aldermanic assistant. Mrs. McGuire was a credible witness. She testified that she had extensive experience in petition challenges, and that she reviewed a small sampling of the HWP petitions against February, 1990 poll sheets.[25] She also testified that no signatures were checked against the permanent binder cards to determine if the signature was not, in fact, the signature of whom it purported to be. She prepared these objections and tendered them to a Mr. Michael Carey and Mr. Ray Simon. Mr. Carey instructed her to insert additional objections so that every signature was objected to under the designation "Not Signed In Own Proper Person". Mrs. McGuire rightfully questioned this practice, since her limited, though thorough review had only resulted in the smaller number of objections she listed. Mrs. McGuire testified that Mr. Carey insisted that the additional signatures should be objected to so as to "preserve the objection for the record".

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[25] While these poll sheets do not represent the current registrations of voters, since voters could have moved, died or registered since February, 1990, they are of some relevance to the Board's consideration whether a good faith effort was made to ascertain the validity of the signatures objected to on the basis that the voter was not registered.

Mrs. McGuire also testified that she met the objectors only briefly at Raymond Simon's office. She explained her research to one of the objectors. Some of the objectors were not even present. Obviously, there was no way for these objectors to have obtained the information relevant to their objections other than through Mrs. McGuire. However, these objectors swore under oath that the objections were true. This lack of knowledge of the nature and accuracy of the objections gives the Board even more reason not to order a binder check.

Taking the only evidence presented by the Objector in its best light, produces only 2,810 specific objections.[26] Thus, the Objector attempts to expand from the 2,810 specific signature objections to a blanket objection including all 60,000 signatures.[27]

---

[26] There were approximately 2,500 specific objections in Objector's Exhibit A (Ex. 5 at the hearing); 120 objections relating to circulators; 190 objections to specific signatures from the Objector's Petition in chief.

The Board sustains the objection in ¶5(s) of the objectors' petition to sheet 4063 since it is a non-conforming sheet, it being a page of a MWRD petition inserted in the county/city component and is invalid; the objection in ¶5(m) that a certain sheet did not bear the signature of a notary public and the objection in ¶5(r) as to sheet 3373 being a suburban/county sheet inserted in the city component, are sustained.

The Board overrules the objection in ¶5(n) that the absence of a notary seal invalidates certain sheets. The Board finds that the sheet appears to have been duly sworn to before a notary public, and that the insertion of a seal is not as crucial to the integrity of the electoral process as the actual oath. *Bowe v. Board of Elections,* 79 Ill.2d 469 (1980). Further, the Board overrules the objection in ¶5(o) since none of the petition sheets were challenged in the appendix recapitulation under the heading "Circulator Did Not Appear Before Notary".

The objectors claim that the sheets done by several "super circulators" contain a pattern of fraud that invalidates the sheets in their entirety.[28] No witnesses were presented, except for Mrs. Bonnie McGuire, who testified that in her experience it would seem to be "impossible" for a circulator to circulate as many sheets as stated in paragraph 5(q). No further evidence was presented by the objector who rested his case after the Chairman of the Board repeatedly offered the opportunity to proceed and present evidence through witnesses or documents or otherwise. The objector presented no evidence which would substantiate the allegations or shift the burden to answer to the HWP. In fact, the HWP had all of the questioned circulators, except one, present at the hearing ready to testify if the Board had found the objector had established a prima facia case, thus shifting the burden to the HWP to present a defense.

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[27] This includes suburban and MWRD signatures.

[28] *See, e.g., Fortas v. Dixon,* 122 Ill.App.3d 699 (1984); *Huskey v. Municipal Officers Electoral Board,* 156 Ill.App.3d 201 (1987).

The Board further finds that even if the "incredible" circulator sheets were invalidated, the candidates would still have enough signatures to remain on the ballot. The Board also finds that the objectors failed in their burden to show a reasonable likelihood that a binder check would result in the invalidity of the petitions.

The Board also notes that the objectors have not requested that any records be subpoenaed from either the County Clerk or Chicago Board of Election Commissioners to support the validity of their objections. Thus, the objectors' request for a binder check is denied.[29]

---

[29] This ruling moots the candidates' objection to the Board's binder check rules which provided that objections would be sustained as to signatures for which binder cards could not be found.

VII

THE NECESSITY TO INCLUDE JUDICIAL CANDIDATES ON THE SLATE[30]

Section 10-2 of the Election Code provides that the new party petition must contain a complete list of the names of candidates of the party for "all offices to be filled in the political subdivision". This has been known in election law circles as the "complete slate requirement".

Having survived the objectors' challenges thus far, the HWP city/county candidates now meet the complete slate requirement, the hurdle most troubling to the Board.

The objectors charge that the HWP did not file a complete slate for offices within the political subdivision of Cook County because it did not file candidates for any judicial office to be elected in Cook County.[31] However, there is nothing in the record as to whether a slate of judicial candidates were, or were not, filed with the State Board of Elections. Additionally, since there are no new judgeships on the November, 1990 ballot[32], all judgeships cited by objectors are to fill judicial vacancies.

---

[30] Member Pucinski does not join in this section of the opinion. For the reasons stated in her dissent, she would sustain the objection that the HWP did not file a complete slate for failure to include judicial candidates and find the nomination papers of the county and city candidates invalid.

[31] The objectors correctly point out that there are judgeships to be elected county wide, citywide within Chicago and suburb-wide, each of which matches a component of the petition. However, the suburban issue has been mooted by our decision above, and the analysis of the city judicial slate vis-a-vis city commissioner candidates is identical to our analysis herein of the county judicial slate issue. Thus, we adopt the county analysis as it relates to city candidates accordingly.

The judgeships at issue are unquestionably "offices". The question is whether they are to be filled in the same "political subdivision". The Election Code defines a "political subdivision" as "any unit of local government, or school district in which elections are or may be held." §1-3(6). The judgeships are elected not from the County of Cook as a unit of local government, but rather from the Cook County Judicial District[33], which is coincidentally coterminous with Cook County.

The Board finds that the legislative intent behind the complete slate requirement is to require a complete slate for all similar offices which run as a group on a recurring basis. In this fashion, the advantages of a new party, rather than the detriments of independent candidacy (such as lower signature requirements) are conferred upon only those who demonstrate cohesiveness and support equivalent to that already demonstrated by the existing political parties.[34]

---

[32] The one additional judgeship for which nominations were made at the primary was invalidated by the decision of the Illinois Supreme Court in *CBA v. State Board of Elections*, No. 69823, (July 2, 1990, opinion modified on denial of rehearing, August 22, 1990), and upheld on petition for review as to the issue of the new judgeship in its revised opinion issued August 22, 1990.

[33] So created by Ill.Const. (1970) Art. VI, § 2.

Moreover, judicial offices are state offices rather than county offices. Ill.Const. (1970) Art. VI. Section 10-2 of the Election Code distinguishes between counties and judicial districts in this context. That statute states that any group of persons desiring to form a new political party throughout any judicial district shall file with the State Board of Elections and that any such group desiring to form a new political party within any county shall file such petition with the County Clerk.

It is logistically impossible for the HWP to comply with the complete slate requirement as it is interpreted by objectors. Candidates for judge must file petitions with the State Board of Elections in Springfield. The HWP county candidates filed with the County Clerk in Chicago.

Thus, the motion to strike and dismiss the objection that the HWP failed to field a complete slate under §10-2 is granted.

CONCLUSION

Since the objectors have failed to demonstrate cause to find the nomination papers of the HWP candidates for county office or city commissionerships invalid, the objections as to those candidates are overruled and those candidates' names as well as the party designation, shall be placed on the November, 1990 general election ballot.

---

[34] *See, e.g., Anderson v. Schneider,* 67 Ill.2d 165 (1977) (dissenting opinion).

Since the objectors have demonstrated cause to find the nomination papers of the HWP candidates for suburban commissionerships and Metropolitan Water Reclamation District offices invalid, the objections are sustained, and those candidates' names and offices shall not be placed on the November, 1990 general election ballot.

Dated this 29th day of August, 1990 at Chicago, Illinois:

COOK COUNTY OFFICERS ELECTORAL BOARD

/s/ Stanley T. Kusper, Jr.
Honorable Stanley T. Kusper, Jr., Chairman

/s/ Ernesto D. Borges, Jr.
Ernesto D. Borges, Jr., Member

Concurring in Part and Dissenting in Part:

/s/ Aurelia M. Pucinski, Member
Honorable Aurelia M. Pucinski, Member[35]

---

[35] I dissent as to Parts III and VII of the opinion and accordingly also to the Conclusion.

Member Pucinski, dissenting as to Parts III and VII of the Board's opinion and as to the Conclusion:

Dissent as to Part III
(Use of The Name "Harold Washington Party")

I concur with the Board's entire opinion, except as to Parts III and VII, and accordingly dissent from the conclusion. I respectfully dissent from that portion of the Board's decision granting the candidates' motion to dismiss the allegations regarding the use of the name "Harold Washington Party".

The Harold Washington Party became an established party in the City of Chicago in April, 1989, when Timothy C. Evans received more than 5% of the vote for Mayor in that election. Section 10-5 of the Election Code plainly states that the name of a new political party shall not bear the same name as, nor include the name of any established political party as defined in Article 10. As the majority indicated, the plain purpose of this statute is to prevent voters from being misled into believing that the new political party is officially and legally linked to the previously-established "new" political party.

The Election Code contains a complicated scheme governing the formation and continuation of political parties. This plan protects citizens from mistakenly believing that certain candidates espouse the views of parties to which they are not affiliated, and further promotes political continuity and party cohesiveness.

In my view, the testimony of Timothy C. Evans is of no value in determining the propriety of the use of the name "Harold Washington Party". While Mr. Evans was the only candidate of the HWP, the only power he earned by that distinction was the ability to appoint interim party officers. §10-2. Those officers, in turn, not Mr. Evans, have the powers conferred by law upon the established party committeeman. These powers include the power to manage and control the affairs of the new party and such customary powers as conferring the party's endorsement on qualified candidates. Mr. Evans failed to appoint such provisional committeemen so that such power could be lawfully exercised. Having failed in this first step to formalize an established political party structure, the HWP and Evans attempt to argue some type of constitutional deprivation if the HWP is not put on the ballot after the "blessing" by the person who was the only candidate of the party but has no official or statutory designation. The established Chicago HWP must take the necessary statutory steps to organize before any one person can proclaim themselves the "chairman" or party leader.

The language of the statute is clear. The name of the new party **"shall"** not include the name of an established party. The statute classifies this as a mandatory **"prohibition"**, not merely as a directory request. In fact, the word "shall" in this very section has been held to be mandatory by the Appellate Court. *Serwinski v. Board of Election Commissioners*, 156 Ill.App.3d 257 (1987). Thus, I would find that the candidates may not use the name "Harold Washington Party". The courts have taught us that this statutory prohibition may be enforced simply by striking the candidates' party label and permitting them to run with no label. *Ballentine v. Bardwell,* 132 Ill.App.3d 1033 (1985). I find this to be the appropriate remedy here, and would deny the motion to dismiss this objection and find the nomination papers to be partially invalid by striking the party name.

Dissent as to Part VII
(The Necessity to Include Judicial Candidates On The Slate)

I would sustain the objection to the HWP county and city candidates that failure to include judicial candidates violated the complete slate requirement. Thus, I would find these nomination papers invalid as well.

Section 10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each **district** contained in that subdivision from which an officer is to be elected. Cook County is both a political subdivision and a unit of local government. Ill.Const. (1970) Art. VII, §1; Election Code § 1-3(6).

Section 1-3(14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits". The HWP petitions fail to contain certain candidates to be elected at-large by the voters of all Cook County and by no other voters--the judicial candidates. Similarly, the Chicago component fails to list Chicago-only judicial candidates, although precisely the same voters will select those candidates.

Article VI of the Illinois Constitution provides that Supreme, Appellate and certain Circuit Court judges shall be elected from the entire County of Cook.

The Supreme Court's most recent review of the complete slate requirement, *Anderson v. Schneider,* 67 Ill.2d 165 (1977), lends support to this interpretation. Although the court permitted the candidates to remain on the ballot even though one member of the slate was disqualified, both the majority and dissent found that the statute did require that at least a "complete list of candidates" be filed.

HWP argues that since judges serve in a state office, their presence on a complete county slate may be disregarded. This argument is misplaced. The statute plainly calls for a list of candidates for "all offices to be filled in the political subdivision at large". Clearly, judges to be elected in the Cook County Judicial Circuit are such officers. The HWP conveniently fails to focus on pertinent language of the statute which states that persons seeking to form a new political party in a judicial district or in any other district or in any other political subdivision (other than a municipality) **not entirely within a single county,** must file with the State Board. [Emphasis added]. Thus, the HWP properly filed with the County Clerk. It would not have been a burden to add the names of the appropriate judicial candidates from the appropriate voting district (county wide, city only, suburban only) to the list of candidates on the HWP petitions.

For these reasons, I would sustain the objection and find the HWP nomination papers invalid in their entirety, as to the party. However, the individuals have filed sufficient signatures to remain on the ballot as individuals.

No. 90-1435 (3)

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1990

◆

COOK COUNTY OFFICERS ELECTORAL BOARD, et al.,

Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

◆

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

◆

REPLY BRIEF OF PETITIONERS COOK COUNTY OFFICERS ELECTORAL BOARD, ET AL.

◆

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INTRODUCTION

Two petitions for writs of certiorari have now been filed in this matter: No. 90-1126, filed by the Harold Washington Party ("HWP") candidates Barbara J. Norman, et al., and No. 90-1435, filed by the Cook County Officers Electoral Board and its members, David D. Orr, Jack O'Malley and Aurelia Pucinski. The Board and its members are nominal respondents in No. 90-1126.

While the brief in opposition filed by Dorothy Reed, et al., is labeled as No. 90-1126, the issues raised are identical to those raised in No. 90-1435. Thus, the Board and its members respectfully submit this reply to the brief in opposition.

◆

ARGUMENT

I. THE CONTROVERSY IS NOT MOOT.

Respondents suggest there is no longer a need for the Court to adjudicate petitioners' ballot access rights since the election has passed. However, under Illinois law, the right of the Harold Washington Party to future ballot access hinges on the legitimacy of the HWP candidates' placement on the November, 1990 ballot. The HWP candidates received over 5% of the vote, entitling their party to an automatic line on future ballots.

Additionally, the decision of the Illinois Supreme Court and this Court's stay order of October 25, 1990 has cast great uncertainty on the manner in which new political party candidates obtain ballot access in Illinois. The controversies in this case will reoccur whenever new political party candidates run in Illinois, or four times every two years. They will first repeat in December, 1991, when petitions for county offices are filed across the state. The Illinois Supreme Court's narrow decision will stymie new political party formation in Illinois unless and until this Court addresses the issues raised by the Petition.

II. THE DECISION BELOW INVOLVED SUBSTANTIAL FEDERAL QUESTIONS.

Respondents argue that the judgment of the Illinois Supreme Court merely involved construction of a state statute, and thus rested on independent state grounds. However, that statutory interpretation is directly at odds with the federally-protected rights of the HWP candidates and their supporters. In fact, the electoral board's findings were specifically motivated by the board's desire to interpret the statutes in a manner consonant with well-recognized federal constitutional principles. See Petition in No. 90-1435 at 40a, 47a.

III. THE STATUTORY PROHIBITION AGAINST USE OF AN ESTABLISHED PARTY NAME DOES NOT PREVENT VOTER CONFUSION.

Respondents correctly point out that the HWP is an established political party in Chicago. The respondents claim that the HWP could not be established under that name in Cook County because then two "different" parties would have the same name, thus fostering "intolerable" voter confusion. For example, respondents claim that under that board's analysis, candidates may form countless new "republican" or "democratic" parties at will, leading to voter confusion as to which is the "real" party.

However, the Illinois Election Code prevents this from happening. First, the republican and democratic parties are established political parties statewide and in every county, city, and other jurisdiction in Illinois.[1] Thus, candidates who wish to adopt those labels cannot run as new party candidates. Rather, those candidates must compete in a primary against the other republican or democratic candidates. Ill.Ann.Stat. (1989) ch. 46, ¶10-1 (Smith-Hurd 1990 Supp.).

Secondly, candidates for county offices run only in even-numbered years; candidates for Chicago municipal offices run in the odd-numbered years. Compare Ill.Ann.Stat. ch. 46, ¶¶2A-10 - 2A-24 (county offices) and ¶¶2A-25 - 2A-26 (Chicago municipal offices). Thus, the "two" Harold Washington parties will never be on the ballot at the same time.

---

[1] Both parties retained this special status by receiving over 5% of the vote at the November, 1990 election for statewide candidates. Ill.Ann.Stat. (1989) ch. 46, ¶10-1 (Smith-Hurd 1990 Supp.)

IV. THE REQUIREMENT THAT A CANDIDATE'S RUNNING-MATES MUST ALSO OBTAIN SUFFICIENT SIGNATURES TO OBTAIN BALLOT ACCESS SERVES NO STATE INTERESTS.

The Electoral Board disqualified the HWP candidates for suburban Cook County Commissioner because the party did not present the requisite 25,000 signatures of suburban voters. However, the board declined to disqualify the remaining HWP candidates because of their suburban running-mates' deficiencies.

The Illinois Supreme Court specifically held that this inadequacy doomed the rest of the HWP county ticket. Petition in No. 90-1435 at 4a. The respondents merely assert that the 25,000 suburban requirement is not too great a barrier for those candidates to surmount. Significantly, the respondents do not seem to disagree with petitioners' argument that the whole slate cannot be stricken merely because one portion is insufficient. The state interest at stake is ensuring that candidates have a measure of support in their voting jurisdiction. Requiring separate suburban signatures for county candidates does nothing to further that interest.

◆

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be granted.

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Nos. 90-1126, 90-1435 Consolidated

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FILED
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In The

Supreme Court of the United States

October Term, 1991

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BARBARA J. NORMAN, et al.,

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Respondents.

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Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

◆

On Writ Of Certiorari To The Supreme Court Of Illinois

◆

JOINT APPENDIX

◆

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Petition For Certiorari In No. 90-1126
Filed October 19, 1990; Petition For Certiorari
In No. 90-1435 Filed March 11, 1991;
Certiorari Granted May 20, 1991

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

DOROTHY REED, et al., Petitioners, v. STANLEY T. KUSPER, JR., et al., Respondents.
Case No. 90 CO 238 and

BARBARA J. NORMAN, et al., Petitioners, v. STANLEY T. KUSPER, JR., et al.,
Respondents., Case No. 90 CO 244, Consolidated.

RELEVANT DOCKET ENTRIES

Date	Filed By	Description
9/6/90	Reed	PETITION for Judicial Review of Electoral Board Decision, No. 90 CO 238
9/10/90	Norman	PETITION for Judicial Review of Electoral Board Decision, No. 90 CO 244
9/11/90	Reed	MEMORANDUM in support of Petition for Judicial Review
9/13/90	Court	ORDER acknowledging filing of Record of Proceedings of the Cook County Officers Electoral Board and consolidating cases 90 Co 238 and 90 CO 244
9/17/90	Norman	MEMORANDUM in opposition to Petition for Judicial Review
9/20/90	Court	ORDER and MEMORANDUM of Opinion affirming in part and reversing in part the decision of the Cook County Officers Electoral Board
9/24/90	Norman	NOTICE OF APPEAL.
9/25/90	Reed	NOTICE OF CROSS-APPEAL.

9/27/90	County Officers Electoral Board	NOTICE OF JOINING APPEAL.

IN THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

Case No. 1-90-2708
DOROTHY REED, et al., Appellees, vs. STANLEY T. KUSPER, JR., et al., Appellants.

RELEVANT DOCKET ENTRIES

Date	Filed By	Description
9/26/90	Court	ORDER granting stay of Circuit Court decision.

SUPREME COURT OF ILLINOIS

Case No. 70833.
DOROTHY REED, et al., Appellees, vs. STANLEY T. KUSPER, JR., et al., Appellants.

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Date	Filed By	Description
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Form of Harold Washington Party County/City Petitions (Remaining sheets omitted in printing)

BIND HERE

2372

PETITION FOR NOMINATION AND TO FORM A NEW POLITICAL PARTY

We, the undersigned, duly qualified and registered voters of the City of Chicago, County of Cook, State of Illinois, do declare that [illegible] ation to form a new political party in the County of Cook to be known and designated as the

HAROLD WASHINGTON PARTY

and we do also petition that the following named persons shall be candidates of the **HAROLD WASHINGTON PARTY** for the offices hereinafter specified in and for the County of Cook, State of Illinois, to be voted for at the General Election to be held on the Sixth day of November, A.D., 1990.

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BARBARA J. NORMAN	PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY	9228 South Colfax Avenue Chicago, Illinois 60617
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HELDIA R. RICHARDSON	CLERK OF COOK COUNTY	10023 South Calumet Avenue Chicago, Illinois 60628
TOMMY BREWER	SHERIFF OF COOK COUNTY	646 Sheridan Square Evanston, Illinois 60202
CHARLES W. ALEXANDER	TREASURER OF COOK COUNTY	12345 South State Street Chicago, Illinois 60628
DOROTHY C. HOGAN	SUPERINTENDENT OF EDUCATIONAL SERVICE REGION OF COOK COUNTY	300 North State Street, Apt. 5820 Chicago, Illinois 60610
WILL LAWRENCE	COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY	2821 South Michigan Avenue, Apt. 411 Chicago, Illinois 60616
KENNETH G. HOPKINS	COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY	8556 South Muskegon Avenue Chicago, Illinois 60617
R. EUGENE PINCHAM	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	9316 South Michigan Avenue Chicago, Illinois 60619
ROBERT E. PINCHAM, JR.	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	9316 South Michigan Avenue Chicago, Illinois 60619
BARBARA J. NORMAN	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	9228 South Colfax Avenue Chicago, Illinois 60617
PERCY V. COLEMAN	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	12842 South Morgan Street Chicago, Illinois 60643
VIVIAN D. STEWART-TYLER	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	4319 W. West End Avenue, Apt. 1 Chicago, Illinois 60624
JAMES A. DEANES	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	5418 West Gladys Avenue Chicago, Illinois 60644
DINO F. McNEAL	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	6900 South Michigan Avenue Chicago, Illinois 60637
MARY KING CRISS	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	2652 West Jackson Blvd., 2nd Floor Chicago, Illinois 60612
DAVID T. PERSONS	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	6730 S. South Shore Drive, Apt. 801 Chicago, Illinois 60649
HELEN E. JONES	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO)	6812 South Champlain Avenue, Apt. 1104N Chicago, Illinois 60637

	SIGNATURE	STREET AND NUMBER	CITY, TOWN, OR VILLAGE	COUNTY
1	[illegible]	8418 S. Kerfoot	CHICAGO	COOK COUNTY ILLINOIS
2	Donald E. Jackson	9443 So. Laflin	CHICAGO	COOK COUNTY ILLINOIS
3	Clarence [illegible]	8907 So. Parnell	CHICAGO	COOK COUNTY ILLINOIS
4	[illegible]	7816 S. Throop	CHICAGO	COOK COUNTY ILLINOIS
5	[illegible]	7859 So. Eggleston Ave	CHICAGO	COOK COUNTY ILLINOIS
6	Ruby L. Thomas	9047 S. [illegible]	CHICAGO	COOK COUNTY ILLINOIS
7	[illegible]	7734 S. Vincennes	CHICAGO	COOK COUNTY ILLINOIS
8	Linda Wilson	7846 S. CREGIER	CHICAGO	COOK COUNTY ILLINOIS
9	[illegible] Bridges	12223 S. Wentworth	CHICAGO	COOK COUNTY ILLINOIS
10	Charlotte [illegible]	12824 So [illegible]	CHICAGO	COOK COUNTY ILLINOIS

AFFIDAVIT OF CIRCULATOR

STATE OF ILLINOIS
COUNTY OF COOK } ss.

I, ROEMELL WOOTEN (print name of circulator), do hereby certify that I am a registered voter of the City of Chicago and that I reside and am registered to vote at 1207 W. 79th St. (house number, name of street), in the City of Chicago, County of Cook, and the State of Illinois, and that the signatures on this sheet were signed in my presence and are genuine, and that none of the signatures on this sheet were signed more than 90 days preceding the last day for filing of this petition, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the City of Chicago, State of Illinois, and that their respective residences are correctly stated as above set forth.

Roemell Wooten
(signature of circulator)

Subscribed and sworn to before me, this 31 day of July, A.D., 1990 by ROEMELL WOOTE.
(print name of circulator)

Veronica R. Hammond
(signature of Notary Public)

OFFICIAL SEAL
VERONICA R. HAMMOND
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. JULY 20, 1994

SEAL

My Commission Expires on

SHEET NO. [illegible]

596

Form of Harold Washington Party County/Suburban Petitions (Remaining sheets omitted in printing)

x .... BIND HERE x

PETITION FOR NOMINATION AND TO FORM A NEW POLITICAL PARTY

We, the undersigned, duly qualified and registered voters of the County of Cook outside of the City of Chicago, State of Illinois, do declare that it is our intention to form a new political party in the County of Cook to be known and designated as the

HAROLD WASHINGTON PARTY

and we do also petition that the following named persons shall be candidates of the HAROLD WASHINGTON PARTY for the offices hereinafter specified in and for the County of Cook, State of Illinois, to be voted for at the General Election to be held on the Sixth day of November, A.D., 1990.

NAME	OFFICE	ADDRESS
BARBARA J. NORMAN	PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY	9228 South Colfax Avenue Chicago, Illinois 60617
JANICE H. ROBINSON	STATES ATTORNEY OF COOK COUNTY	2113 West 119th Street Blue Island, Illinois 60406
DONALD PAMON	ASSESSOR OF COOK COUNTY	7010 South Bennett Avenue Chicago, Illinois 60649
HELDIA R. RICHARDSON	CLERK OF COOK COUNTY	10023 South Calumet Avenue Chicago, Illinois 60628
TOMMY BREWER	SHERIFF OF COOK COUNTY	646 Sheridan Square Evanston, Illinois 60202
CHARLES W. ALEXANDER	TREASURER OF COOK COUNTY	12345 South State Street Chicago, Illinois 60628
DOROTHY C. HOGAN	SUPERINTENDENT OF EDUCATIONAL SERVICE REGION OF COOK COUNTY	300 North State Street, Apt. 5820 Chicago, Illinois 60610
WILL LAWRENCE	COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY	2921 South Michigan Avenue, Apt. 411 Chicago, Illinois 60616
KENNETH G. HOPKINS	COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY	8556 South Muskegon Avenue Chicago, Illinois 60617
ROBERT E. BROOKS, JR.	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	3474 Western Avenue, Apt. B Park Forest, Illinois 60466
MELLO SAM H. CLORA	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	1504 South 1st Avenue Maywood, Illinois 60153
JUDY MARIE HAWTHORNE	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	362 Oswego Street Park Forest, Illinois 60466
CHESTER LeSURE	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	15915 Finch Avenue Harvey, Illinois 60426
CELIA DUNCAN	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	400 Cedar Ridge Lane Richton Park, Illinois 60471
DON C. PASSMORE, JR.	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	4918 Mission Drive Richton Park, Illinois 60471
BOBBIE J. SMITH	MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO)	97 Norwood Blvd. Park Forest, Illinois 60466

	SIGNATURE	STREET AND NUMBER	CITY, TOWN, OR VILLAGE	COUNTY	
1	Alice Young	1614 Ingrid Ln.	Chgo-Hts	[✓ COOK] COUNTY	ILLINOIS
2	[illegible]	1622 Ingrid Ln.	Chicago Hts	[✓ COOK] COUNTY	ILLINOIS
3	Tommy Young	1614 Ingrid Ln.	Chgo Hts	[✓ COOK] COUNTY	ILLINOIS
4	King Smith	932 East 16th Street	Ford Heights	[✓ COOK] COUNTY	ILLINOIS
5	Lee Franklin	504 Lowe Ave	Cago. Hts	[✓ COOK] COUNTY	ILLINOIS
6	Ed Moore Jr.	1424 [illegible] Ave	Chicago Hts.	[✓ COOK] COUNTY	ILLINOIS
7	Bridgett R Eaton	1313 Mason Ct.	Chgo. Hts	[✓ COOK] COUNTY	ILLINOIS
8	Patricia Back	2711 W Hickory St	Chgo Hts	[✓ COOK] COUNTY	ILLINOIS
9	L.C. Horton	1421 Green	Chgo. Hts	COOK COUNTY	ILLINOIS
10	[illegible] Paxton	1434 Keen St.	Chgo Hts	COOK COUNTY	ILLINOIS

AFFIDAVIT OF CIRCULATOR

STATE OF ILLINOIS
COUNTY OF COOK } ss.

I, Laurence Stringfellow (print name of circulator), do hereby certify that I am a registered voter of the political division for which the candidates are seeking election; that I reside at, and am registered to vote at, 1105 Parkview (Number and Name of Street), in C Hgo. HTs, Il. 60411 (City, Town or Village), in the County of Cook, and the State of Illinois, and that the signatures on this sheet were signed in my presence and are genuine, and that none of the signatures on this sheet were signed more than 90 days preceding the last day for filing of this petition, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the County of Cook, outside the City of Chicago, State of Illinois, and that their respective residences are correctly stated as above set forth.

Laurence Stringfellow
(Signature of circulator)

Subscribed and sworn to before me, this 3rd day of August A.D. 1990, by LAURENCE STRINGFELLOW
(print name of circulator)

Thelma Gaidero
Signature of Notary Public

SEAL

"OFFICIAL SEAL"
Thelma Gaidero
Notary Public, State of Illinois
My Commission Expires 3/10/93

My C

SHEET NO. 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

OBJECTIONS TO THE NOMINATION PAPERS)
OF THE HAROLD WASHINGTON PARTY, A)
NEW POLITICAL PARTY, AND TO EACH OF)
THE FOLLOWING CANDIDATES OF THE)
HAROLD WASHINGTON PARTY:)
)
COUNTY-WIDE)
BARBARA J. NORMAN)
JANICE H. ROBINSON)
DONALD PAMON)
HELDIA R. RICHARDSON)
TOMMY BREWER)
CHARLES W. ALEXANDER)
DOROTHY C. HOGAN)
WILL LAWRENCE)
KENNETH G. HOPKINS)
)
INSIDE THE CITY OF CHICAGO)
R. EUGENE PINCHAM)
ROBERT E. PINCHAM, JR.)
BARBARA J. NORMAN)
PERCY V. COLEMAN)
VIVIAN D. STEWART-TYLER)
JAMES A. DEANES)
DINO F. McNEAL)
MARY KING CRISS)
DAVID T. PERSONS)
HELEN E. JONES

OUTSIDE THE CITY OF CHICAGO)
ROBERT E. BROOKS, JR.)
MELLO SAM H. CLORA)
JUDY MARIE HAWTHORNE)
CHESTER LeSURE)
CELIA DUNCAN)
DON C. PASSMORE, JR.)
BOBBIE J. SMITH)

VERIFIED OBJECTOR'S PETITION

Now come Dorothy Reed residing and registered to vote at 3670 South Wabash, Chicago, Illinois, 60653 and Valerie A. Sutton residing and registered to vote at 6431 South Greenwood Avenue, Chicago, Illinois, 60637; and Patton L. Feichter residing and registered to vote at 141 Hastings, Elk Grove, Illinois, 60007; and Ervin S. Ricks residing and registered to vote at 8721 Springfield, Skokie, Illinois 60076; and David Barrera residing and registered to vote at 11578 South Prarie [sic], Chicago, Illinois, 60628 (Hereinafter sometimes referred to as "Objectors") and each and all of them state that their respective addresses are as stated, and that each and all of them are legal voters of the County of Cook.

The Objectors, each and all of them, state that their interest in filing the following objections is that of citizens desirous of seeing that the election laws governing the filing of nomination papers for new political parties in the County of Cook are properly complied with.

The Objectors make the following objections to the nomination papers of the Harold Washington Party

("HWP"), a new political party in the County of Cook, and to each of the following candidates of the HWP –

COUNTY OF COOK COUNTY-WIDE:

BARBARA J. NORMAN – President of the County Board of Commissioners
JANICE H. ROBINSON – States Attorney
DONALD PAMON – Assessor
HELDIA R. RICHARDSON – Clerk
TOMMY BREWER – Sheriff
CHARLES W. ALEXANDER – Treasurer
DOROTHY C. HOGAN – Superintendent of Educational Services
WILL LAWRENCE – Commissioner of the Board of Appeals
KENNETH G. HOPKINS – Commissioner of the Board of Appeals

INSIDE THE CITY OF CHICAGO: [Member of the County Board of Commissioners – Cook County]

R. EUGENE PINCHAM
ROBERT E. PINCHAM, JR.
BARBARA J. NORMAN
PERCY V. COLEMAN
VIVIAN D. STEWART-TYLER
JAMES A. DEANES
DINO F. McNEAL
MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES

OUTSIDE THE CITY OF CHICAGO: [Member of the County Board of Commissioners – Cook County]

ROBERT E. BROOKS, JR.
MELLO SAM H. CLORA
JUDY MARIE HAWTHORNE
CHESTER LeSURE
CELIA DUNCAN
DON C. PASSMORE, JR.
BOBBIE J. SMITH

– all nominees of the HWP to be voted upon at the General Election to be held on November 6, 1990. The Objectors further state that said nomination papers are insufficient in law and in fact for the following reasons:

1. The pertinent provisions of §10-2 of the Illinois Election Code (Ill.Rev.Stats., Ch. 46, §1-1 et seq.) provide as follows:

> "In the case of a petition to form a new political party *within a political subdivision* in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. . . . Each sheet of such petition must contain a *complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.*"
>
> (Emphasis added)

The nomination papers seek to form a "new political party in the County of Cook." The County of Cook is a "political subdivision" (see, e.g., Election Code §1-3(6) and §7-4(6)). The nomination papers filed by the HWP consist only of two district components: (i) the component consisting of county-wide and "inside the city of Chicago" district non-judicial candidates; and (ii) the component consisting of county-wide and "outside the city of Chicago" district non-judicial candidates.

The nomination papers fail to list candidates for any of the eighteen (18) judicial vacancies to be elected in the

County of Cook at the November 6, 1990 General Election. Thus, the nomination papers are in violation of the foregoing mandatory requirements of §10-2 in that:

(a) The nomination papers filed by the HWP (including both district components) fatally do not contain a "complete list of the names of the candidates of the party for all offices to be filled in the political subdivision" of the County of Cook. Specifically, the nomination papers fail to list candidates for the following judicial offices that are scheduled to be filled county-wide from the County of Cook at the November 6, 1990 General Election:

Supreme Court Vacancies
Hon. Seymor Simon
Hon. Daniel P. Ward

Appellate Court Vacancies
Hon. R. Eugene Pincham
Hon. William R. Quinlan
Hon. John J. Stamos
Hon. John J. Sullivan
Hon. William S. White

Circuit Court Vacancies (County-wide)
Hon. Arthur J. Cieslik
Hon. Richard J. Fitzgerald
Hon. Jacques F. Heilingoettr
Hon. Frank R. Petrone
Hon. Richard L. Samuels
Hon. Adam N. Stillo

Additional Judgeship

(b) Secondly, the Cook County territory described as "inside the city of Chicago" is a "district" (as defined in Chapter 46, §1-3(14) of the Election Code) for purposes of electing judicial offices in said portion of the County of Cook. The nominating petition district "component" sheets consisting of "inside the city of Chicago" candidates, defectively fails to list: (i) the judicial offices referred to in subparagraph (a) above and (ii) the following judicial offices that are scheduled to be elected from inside the city of Chicago at the November 6, 1990 General Election:

Cook County Circuit Court Vacancies
(Inside the City of Chicago)

Hon. Roger J. Kiley, Jr.
Hon. Blanche M. Manning
Hon. John J. McDonnell

(c) Thirdly, the Cook County territory described as "outside the city of Chicago" (or suburbs "only") is a "district" (as defined in Chapter 46, §1-3(14) of the Election Code) for purposes of electing judicial offices in said portion of the County of Cook. The nominating petition district "component" sheets consisting of "outside the city of Chicago" candidates, defectively failed to list: (i) the judicial offices referred to in subparagraph (a) above and (ii) the following judicial offices that are scheduled to be elected form [sic] outside the city of Chicago at the November 6, 1990 General Election:

Cook County Circuit Court Vacancies
(Outside the City of Chicago)

Hon. George M. Marovich
Hon. Dean M. Trafelet

For the reasons set forth within this paragraph, namely, the failure to include a Cook County judicial slate, the nomination papers of the HWP violate the aforesaid provisions of §10-2 of the Election Code which require that each sheet of a new political party petition shall contain a "complete list" of the names of candidates for each office to be filled in the political subdivision at-large.

The nomination petition of the HWP, fails to contain a requisite judicial slate from the (i) inside and (ii) outside the city of Chicago judicial districts, which violates the pertinent provisions of §10-2 which requires that sheets comprising each district component of a new political party petition shall contain a "complete list" of the names of candidates for each office to be filled in the particular district component as well as the political subdivision at-large.

This aforesaid failure to file a "complete list" of candidates for all offices to be filled in the County of Cook (including the inside-the-city-of-Chicago and Outside-the-city-of-Chicago components) renders the HWP nomination papers invalid.

2. Pursuant to the pertinent provisions of §10-2 of the Election Code:

> "In the case of a petition to form a new political party within a political subdivision in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of a political subdivision and signed only by qualified electors who are residents of such district. . . . Each component of the petition from each district from which an officer is to be elected must be

> signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district."

In this regard, §10-2 further provides that for a state-wide new political party, the minimum petition signatures shall "total 1% of the number of voters who voted at the next preceding State-wide general election or 25,000, whichever is less" and that:

> (W)henever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

As defined in §1-3(14) of the Election Code, the territory "inside the city of Chicago" and the territory "outside the city of Chicago" each constitute a "district". Consistent with this and the aforesaid §10-2 district component requirements, the proponents filed nomination papers with two district components:

(i) the inside the city of Chicago "district" (including County at-large candidates) and (ii) the outside the city of Chicago "district" (including County at-large candidates). Also, the requirement of 25,000 signatures was less than 1% of the vote at the next preceding general State-wide election.

Applying these provisions to the nomination papers herein, the minimum signature requirement for the "outside the city of Chicago" district of the nomination papers is 25,000 signatures. However, the "outside the city of Chicago" district of the nomination papers contain on their face a total of no more than 7,560 purported valid signatures of electors residing in the portion of Cook County outside the city of Chicago.

Consequently, the HWP nomination papers are void and invalid as they lack the necessary minimum of 25,000 valid signatures of electors residing in the suburban area of the County of Cook, as required by §10-2 of the Election Code.

3. The Objectors further state that the "Harold Washington Party" is an "established political party" in the city of Chicago pursuant to, and as defined by, Article 10 of the Illinois Election Code. The nomination papers filed herein purport to create a "new political party" in the County of Cook, with the name "Harold Washington Party".

These nomination papers directly violate the express mandate of Article 10 of the Election Code which states that a "new political party" petition for nomination:

> "(S)hall not bear the same name as, nor include the name of, *any* established political party as defined in this article."
>
> (Emphasis added)

The nomination papers at issue bear the name of an already "established political party," the "Harold Washington Party" and, as such, violate the §10-5 prohibition against a new political party bearing "the same name" of an established political party. Accordingly, this Honorable Board should order that the Harold Washington Party designation should be stricken from the ballot. See, e.g., *Ballentine v. Bardwell*, 132 Ill.App.3d 1033, 478 N.E.2d 500 (1st Dist., 1985); *Doty v. Representation for Every Person (REP) Party*, 97 Ill.App.3d 316, 422 N.E.2d 1156 (1st Dist., 1981).

4. Pursuant to the pertinent provisions of §10-2 of the Election Code:

> "A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as *a* candidate of a new political party for election in that general election."
>
> (Emphasis Added)

One of the listed candidates on the HWP nomination papers, R. Eugene Pincham, was a Democratic Party candidate on the March 20, 1990 Party Primary ballot running for the office of President of the County Board of Commissioners as well as County Commissioner from inside the city of Chicago. Mr. Pincham was defeated in his President of the County Board of Commissioners candidacy, and another Democratic Party candidate was proclaimed as the successful Democratic Party nominee by the Cook County Canvassing Board. In view of the aforesaid provisions of §10-2, Mr. Pincham is "ineligible" and not qualified to run as a new political party candidate for election at the November 6, 1990 General Election. However, on August 6, 1990, R. Eugene Pincham, as required by §10-5 of the Election Code, filed a sworn statement of candidacy averring that he was "qualified" to run for office as a candidate of the Harold Washington Party. Mr. Pincham, however, is not legally qualified as a Harold Washington Party new political party candidate and, therefore, his statement of candidacy is false and invalid and the nomination papers must be stricken.

5. The Objectors state that the nomination papers of the Harold Washington Party to form a new political party in the County of Cook ("Nomination Papers") pursuant to the pertinent provisions of Sec. 10-2 of the Election code require 25,000 signatures from qualified electors of the County of Cook, residing solely within the City of Chicago (hereinafter referred to as "City" petitions) and a further 25,000 signatures from qualified electors of the County of Cook, excluding the City of Chicago, (hereinafter referred to as "Suburban" petitions). The nomination papers are insufficient in fact and in law for the following reasons:

(a) Said nomination papers contain the names of numerous persons who did not sign in their own proper person, and these signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNATURE NOT PROPER AND NOT GENUINE", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(b) Said nomination papers contain the names of numerous persons who are not in fact duly qualified and registered voters at the addresses shown Illinois as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT REGISTERED AT ADDRESS SHOWN", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(c) Said nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said City of Chicago on the City petitions as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT IN DISTRICT" (CHICAGO COMPONENT), attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(d) Said nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said Suburban area of Cook County on the Suburban petitions as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT IN DISTRICT" (SUBURBAN COMPONENT), attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(e) Said nomination papers contain the names of numerous persons who signed the petition more than once, the second and any subsequent signatures being invalid. The duplicate signatures are more fully set forth in the Appendix-Recapitulation under the column designated "DUPLICATE SIGNATURES", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(f) Said nomination papers contain the names of numerous persons for whom either no residence is set forth or the address is incomplete as more fully set forth, in the Appendix-Recapitulation under the column designated "INCOMPLETE ADDRESS", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(g) Said nomination papers contain sheets of signatures, the circulator of which did not sign his name thereto and therefore, all of said signatures on these circulators' sheets are in violation of the Illinois Election Code.

(h) Said nomination papers contain the names of these persons as circulators of petition sheets who did not sign petition sheets in their own proper persons, and said signatures are not genuine and are forgeries, and therefore, all of said signatures on these circulators' sheets are in violation of the Illinois Election Code.

(i) Said nomination papers contain the names of numerous persons in the capacity of circulators who are not in fact duly qualified and registered voters at the address shown as more fully set forth in the Appendix-Recapitulation under the column designated "CIRCULATOR NOT REGISTERED", attached hereto and made a part hereof, all of said signatures on these sheets being in violation of the Illinois Election Code.

(j) Said nomination papers contain the names of numerous persons in the capacity of circulators who are not in fact residents of and registered voters of said City of Chicago on the City petitions, and therefore, all of said signatures on these sheets are in violation of the Illinois Election Code.

(k) Said nomination papers contain the names of numerous persons in the capacity of circulators who are not in fact residents of and registered voters of Suburban area of the said County of Cook on the Suburban petitions, as more fully set forth in the Appendix-Recapitulation under the column designated "CIRCULATOR OF SUBURBAN PETITIONS RESIDES OUTSIDE THE SUBURBAN AREA", attached hereto and made a part hereof, all of said signatures on this sheet being in violation of the Illinois Election Code.

(l) Said nomination papers contain the names of numerous persons as circulators either for whom no residence address is set forth, or whose address is set forth incompletely, as more fully set forth in the Appendix-Recapitulation attached hereto and incorporated herein under the column designated "CIRCULATOR ADDRESS INCOMPLETE", attached hereto and made a part hereof, all of said signatures on these sheets being in violation of the Illinois Election Code.

(m) The Objectors further state that all the signatures on sheet 1889 are invalid because the purported notary public did not sign the jurat at the bottom of the sheet. The Objectors object to each and every signature on said sheet as more fully set forth in the Appendix-Recapitulation under the column designated "NO NOTARY SIGNATURE", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

(n) The Objectors further state that all the signatures on sheet 185, 982, 1221, 1222 and 3183 are invalid because the purported notary public did not provide a notary seal at the bottom of said sheets. The Objectors object to each and every signature on said sheets as more fully set forth in the Appendix-Recapitulation under the column designated "NO NOTARY SEAL", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

(o) Said nomination papers contain the names of persons as circulators of petition sheets who did not sign said petition sheets before a notary or other officer authorized to take acknowledgment of deeds in the state as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the column designated "CIRCULATOR DID NOT APPEAR BEFORE NOTARY", attached hereto and made a part hereof, all of said signatures on this sheet being in violation of the Illinois Election Code.

(p) The objection specified clearly evidence a pattern of fraud, false swearing and a total disregard of the Illinois Election Code. Such a pattern requires that the Electoral Board examine the validity of each and every signature (by circulator or signer) contained on the petitions, regardless of whether specified objections to such signatures have been made. On the basis of the pattern of fraud, false swearing and total disregard of the Illinois Election Code described and set forth, the Objectors hereby specifically object to each and every signature (by circulator or signer) contained on the petitions.

(q) The Objectors further state that the results of a pre-objection review of all the petition sheets circulated by Mary King Criss, Will Lawrence, Dino McNeal, Obie Roberts, Larry Smith and Barbara Williams evidence a pattern of fraud, false swearing, forgeries, irregularities permeating their petition sheets and a total disregard for the integrity of the electoral process and that their circulator's oath be found by this Board as incredible and that all the remaining signatures on their petition sheets be stricken in their entirety.

(r) The Objectors further state that sheets 269, 769, 720, 756 to 768, 774, 775 and 3373 from the petition component that includes those candidates to be elected from the city of Chicago, are in fact petition sheets which relate to those candidates to be elected from outside the city of Chicago and therefore all signatures on said sheets, insofar as they pertain to those candidates to be elected from the city of Chicago, should be stricken in their entirety.

(s) The Objectors further state that sheets 324 to 331, 1198, 2111 and 4063 from the petition component that includes those candidates to be elected from the city of Chicago, which are in fact non-conforming petition sheets which include candidates to be elected to the office of Commissioner of the Metropolitan Water Reclamation District of Greater Chicago, Illinois. Therefore, these non-conforming sheets, which do not contain a complete slate of candidates to be elected from the County of Cook, are invalid and should be stricken in their entirety.

6. The Objectors further state that fifteen percent of all signers to the petitions for the nomination of the Harold Washington Party were examined with the result that

53% of that amount were found to be invalid and contrary to the requirements of the Election Code.

Accordingly, it is clear that the number of invalid signatures to the petitions for nomination of the Harold Washington Party is so large as to demonstrate a conscious disregard of a the [sic] statutory requirements and demonstrate strongly that virtually all of the signatures to those petitions are invalid and fail to meet the requirements of the Illinois ELection [sic] Code.

The Objectors further state that they are submitting – in conjunction with the objections set forth in paragraph 6 as well as in conjunction with all objections in this Objectors' Petition – Exhibit A, the contents of which shall be incorporated herein and made a part hereof.

WHEREFORE, the Objectors pray that this Honorable Board order that the Clerk of Cook County and the Chicago Board of Election Commissioners conduct a full-scale binder review of the allegation contained herein and in the accompanying Appendix-Recapitulation; that subpoenas issue where necessary with respect to each of the allegations herein, including without limitation to those persons identified in paragraph 5(q).

The Objectors further pray that this Honorable Board declare that the nomination papers of the Harold Washington Party and the nominations of all candidates appearing thereon be declared insufficient, null and void; not in compliance with the laws of the State of Illinois and lack the statutory minimum number of valid signatures for ballot placement and hence, invalid, and that this Honorable Board enter its decision that the Harold Washington Party and the names of all candidates appearing on said nomination papers not be printed on the official ballot for the General Election to be held on November 6, 1990.

____
OBJECTOR

/s/ Dorothy Reed
OBJECTOR

/s/ Valerie A. Sutton
OBJECTOR

/s/ Patton L. Feichter
OBJECTOR

/s/ Ervin S. Ricks
OBJECTOR

/s/ David Barrera
OBJECTOR

* * *

(Verification Omitted In Printing)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

OBJECTIONS TO THE NOMINATION)
PAPERS OF THE HAROLD WASHINGTON)
PARTY, A NEW POLITICAL PARTY, AND)
TO EACH OF THE FOLLOWING)
CANDIDATES OF THE HAROLD)
WASHINGTON PARTY:)
)
COUNTY-WIDE)
BARBARA J. NORMAN)
JANICE H. ROBINSON)
DONALD PAMON)
HELDIA R. RICHARDSON)
TOMMY BREWER)
CHARLES W. ALEXANDER)
DOROTHY C. HOGAN)
WILL LAWRENCE)
KENNETH G. HOPKINS)
)
INSIDE THE CITY OF CHICAGO)
R. EUGENE PINCHAM)
ROBERT E. PINCHAM, JR.)
BARBARA J. NORMAN)
PERCY V. COLEMAN)
VIVIAN D. STEWART-TYLER)
JAMES A. DEANES)
DINO F. McNEAL)
MARY KING CRISS)
DAVID T. PERSONS)
HELEN E. JONES)

OUTSIDE THE CITY OF CHICAGO)
ROBERT E. BROOKS, JR.)
MELLO SAM H. CLORA)
JUDY MARIE HAWTHORNE)
CHESTER LeSURE)
CELIA DUNCAN)
DON C. PASSMORE, JR.)
BOBBIE J. SMITH)

APPENDIX RECAPITULATION TO VERIFIED OBJECTOR'S PETITION

CITY OF CHICAGO ONLY

Form of Appendix-Recapitulation Sheets for Objection to County/City Petitions (Remaining sheets omitted in printing)

APPENDIX - RECAPITULATION

SHEET NO. 1

Line No.	Signer not registered at address shown	Signer not in district	Signature not proper person and not genuine	Incomplete address	Improper circulator	Duplicate	Circulator circulated Dem. petitions	Circulator signed Dem. petitions	Circulator circulated Rep. petitions	Circulator signed Rep. petitions	Signed Dem petitions	Signed Rep petitions	Duplicate signatures	Other
1.	X		X											
2.	X		X											
3.	X		X											
4.	X		X											
5.	X		X											
6.	X		X											
7.	X		X											
8.	X		X											
9.	X		X											
10.	X		X											

CIRCULAT
NOT
REGISTERI

NOTARY ____________________

T. S. ____________________

O. ____________________

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

OBJECTIONS TO THE NOMINATION)
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PARTY, A NEW POLITICAL PARTY, AND)
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CANDIDATES OF THE HAROLD)
WASHINGTON PARTY:)
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BARBARA J. NORMAN)
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OUTSIDE THE CITY OF CHICAGO)
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JUDY MARIE HAWTHORNE)
CHESTER LeSURE)
CELIA DUNCAN)
DON C. PASSMORE, JR.)
BOBBIE J. SMITH)

APPENDIX RECAPITULATION TO VERIFIED OBJECTOR'S PETITION

SUBURBAN COOK

Form of Appendix-Recapitulation Sheets for Objection to County/Suburban Petitions (Remaining sheets omitted in printing)

APPENDIX - RECAPITULATION

SHEET NO. 1

Line No.	Signer not registered at address shown	Signer not in district	Signature not proper person and not genuine	Incomplete address	Improper circulator	Duplicate	Circulator circulated Dem. petitions	Circulator signed Dem. petitions	Circulator circulated Rep. petitions	Circulator signed Rep. petitions	Signed Dem petitions	Signed Rep petitions	Duplicate signatures	Other CIRCULATOR NOT REGISTERED
1.	X		X											
2.	X		X											
3.	X		X											
4.	X		X											
5.	X		X											
6.	X		X											
7.	X		X											
8.	X		X											
9.	X		X											
10.	X		X											

NOTARY____________________

T.S. ____________

O. ____________

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

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CELIA DUNCAN)
DON C. PASSMORE, JR.)
BOBBIE J. SMITH)

EXHIBIT "A" TO VERIFIED OBJECTOR'S PETITION

Form of Appendix - Recapitulation Sheets for Exhibit "A" to Verified Objector's Petition Remaining sheets omitted in printing)

HEET NO. 45

ine No.	Signer not registered at address shown	Signer not in district	Signature not proper person and not genuine	Incomplete address	Improper circulator	Duplicate	Circulator circulated Dem. petitions	Circulator signed Dem. petitions	Circulator circulated Rep. petitions	Circulator signed Rep. petitions	Signed Dem petitions	Signed Rep petitions	Duplicate signatures	Other
1.	X		X	X										
2.	X		X											
3.	X		X											
4.			X											
5.			X											
6.	X		X											
7.			X											
8.			X											
9.	X		X											
10.			X											

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BEFORE THE DULY CONSTITUTED
ELECTORAL BOARD FOR THE
COUNTY OF COOK, ILLINOIS

DOROTHY REED, et al.,)
Objectors,)
)
v.) No.
) 90 COEB CO 02
THE HAROLD WASHINGTON)
PARTY,)
Respondents.)

MOTION TO STRIKE AND DISMISS OBJECTION NO. 1

Now comes the Harold Washington Party, and its candidates, by and through their attorneys, and moves the Cook County Officers Electoral Board for entry of an Order striking and dismissing Objection No. 1 of the Objections of Dorothy Reed, et al. ("Objection"). For the reasons stated below, Objection No. 1 is insufficient as a matter of law. This Board accordingly should strike and dismiss Objection No. 1, and permit the legitimate candidacy of the Harold Washington Party to proceed on the November, 1990 ballot.

BACKGROUND

On August 6, 1990, the Harold Washington Party ("HWP") filed with the office of the Clerk of Cook County, Illinois, nomination petitions for certain offices in the November, 1990 general election ("petitions"). The HWP petitions were filed to form a new political party in Cook County and for the purpose of being placed on the November ballot. Consistent with the requirements of

Ill.Rev.Stat., Ch. 46, Sec. 10-2, the HWP's petition consisted of two separate components, one for each district from which an officer is to be elected.

On August 13, 1990, the Objector filed a petition setting out six (6) objections to the HWP nominating petitions. Objection No. 1 specifically alleged that the HWP nomination papers were void and invalid as they faile dto [sic] offer candidates for eighteen (18) judicial offices in the November election, in the Supreme, Appellate and Circuit Courts.

ARGUMENT

The Objector attempts to argue that the nomination papers of the Harold Washington Party ("HWP") are in violation of the requirement set forth in Chapter 46, section 10-2 of the Illinois Revised Statutes ("Section 10-2"), which states in pertinent part:

> Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.

Objector argues that the HWP nomination papers are invalid under Section 10-2, because the Party did not list candidates for any of the eighteen (18) judicial vacancies in Cook County. Additionally the Objector argues that the Cook County territory described as "inside the City of Chicago" and that described as "outside the City of Chicago" are "districts" for purposes of electing judicial offices in said positions of the County of Cook where the HWP is running a slate of countywide candidates.

These arguments are meritless as a matter of law. At the outset, there is simply no dispute that: judicial offices, those held by Supreme Court and Appellate Court Justices, as well as Circuit Court Judges, are offices of the State and *not* the County, (Ill. Const. 1970, Arts. VI, VII); (a) "judicial districts" are distinct and separate from "county board" or countywide districts, (Chapter 46, Ill.Rev.Stat., section 1-3(14); (b) a nomination petition to form a new political party county wide need not and should not have a slate of judicial candidates (Chapter 46, Ill.Rev.Stat., Section 7-12(1), (2); and, (c) the City of Chicago are "districts" for purposes of electing judicial offices in said positions of the County of Cook where the HWP is running a slate of county wide candidates.

In light of these undisputed facts, the Objector has simply missed the mark. The Objector attempts to create a legal issue where there is none by treating "judicial districts" as though they were the same as "county board districts" or county wide districts, a treatment the statute neither makes nor permits. Ill.Rev.Stat., Ch. 46, Section 1-3(14) defines "district" to mean any area which votes as a unit for the election of any officer . . . [to include] legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts," *Separate* nomination papers are required for that separate entity known as a "judicial district." Indeed, Ill.Rev.Stat., Ch. 46, Section 7-12(1), relates to nominations to be made for State, congressional and *judicial office,* while chapter 46, section 7-12(2) relates to nominations made for county offices or trustees for sanitary district. And, Section 10-2 of the Election Code states:

> Any group of persons hereafter desiring to form a new political party throughout the state, or in any congressional, legislative or *judicial district . . . shall file with the State Board of Elections* a petition, as hereinafter provided; and any such group of person [sic] hereafter desiring to form a new political party within any *county* shall file such petition with the County Clerk.

At no time, under law, was the HWP required to file two separate petitions – one with the State and one with the County in order to form a new County political party. Section 10-2 of the Code specifically states "in the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate "components" for each district from which an officer is to be elected." That is exactly what the party filed, a single petition consisting of separate components for each "county board district" (not judicial district) from which an officer is to be elected. Because judicial petitions *must* be filed with the State Board of Elections, judicial candidates necessarily are not a requisite component of "new party" filing within a county district. Otherwise, the statutorily recognized distinction between judicial and other districts is meaningless and the statutorily mandated filing procedures would have to be ignored.

The HWP met its obligation by filing a single petition, not two different petitions for two distinctly different types of districts, with the office of the Clerk of Cook County.*

The absurdity of the Objector's strained interpretation of Section 10-2 of the Election Code is self-evident. Under the Objector's argument, any office voted on in Cook County – regardless of whether it is a County office or whether the law expressly recognizes the office to be of a different district or character – is subject to Section 10-2. Under this interpretation, there is no principled basis to distinguish judicial offices from the offices of United States Senator, Representatives in Congress, Governor and Lieutenant Governor, Attorney General, Secretary of State, Comptroller, Treasurer, Trustee of the University of Illinois, State Senators, Representatives in the General Assembly and Commissioners of the Metropolitan Water Reclamation District of Greater Chicago. In each case, like judges, the office *is* voted upon in the county, even though the "district" subject to the election is not the same as the "district" for which county officers run. This Board obviously cannot require HWP to tender candidates for these state and national offices. It can do no more with respect to judicial offices either.

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* See also, 1990 Primary and General Election Calendar for Chicago: August 6, 1990 "Last day to file new political party nominating petitions; Federal, State, Legislative, and Judicial candidates file nominating petitions in the principal office of the State Board of Elections. Candidates for Commissioner of the Metropolitan Water Reclamation District of Greater Chicago *and for County Office* file nominating petitions with the office of the Clerk of Cook County. Section 10-6.

Election authorities corroborate the plan reading of the ignored by the Objector. The State of Illinois Candidate's Guide for 1990, issued by the State Board of Elections, states under its heding [sic] of "New Political Candidates":

> A petition to form a new political party for County-wide offices shall contain a complete list of candidates for such party for all offices (including all *county board districts*) to be filled at the next election.
>
> *Id*. at 27.

It also states that County officers are:

> Clerks, Treasurers, Sheriffs, Assessors, Commissioners, County Board Members and Superintendents of Educational Service Regions.
>
> *Id*. at 26.

The HWP filed a petition to form a new political party for *county-wide* offices, not State judicial offices, and in so doing has proffered a complete list of candidates. Nowhere does the Election Code state or suggest that in order to form a new political party for County-wide office one must file two separate petitions, one for county offices and the other for State judicial offices.

To suggest that judicial offices are a necessary element of a county slate is specious. Under Chapter 46, all references to filing petitions for judicial offices and county-wide offices are separate. And, of course, most importantly, the Illinois State Constitution makes clear the separation of judicial offices from County offices. The local government article of the Constitution relating to county officers does not once mention or provide for judicial candidates (Ill. Const. 1970, Art. VII, sec. 4); the

Constitution vests the judicial power in a "Supreme Court, an Appellate Court and Circuit Courts" (Ill. Const. 1970, art. VI, sec. 1). As stated by the Illinois Supreme Court:

> *Only one unified court system operating statewide is contemplated.* Article VI of the 1970 Constitution does not contemplate nor does it authorize the exercise of any control over or permit the imposition of a burden on the judicial system by an local entity.
>
> *The administration of justice under our Constitution is a matter of Statewide concern and does not pertain to local government or affairs.* (Emphasis added.) *Id.* at 542; Accord *Orenic v. Ill. State Labor Relations Board,* 127 Ill.2d 45, 480 (1989); *Drury v. County of McLean,* 89 Ill.2d 417, 423-24 (1982); *County of Kane v. Carlson,* 116 Ill.2d 186, 207-08 (1987).

For example, Article 7, Section 4 of the Illinois Constitution (c) states that "elected County officials shall be elected for terms of four years at general elections by law." This provision is inapplicable to judicial candidates since the Supreme and Appellate Court Justices are elected to terms of ten years, and regular Circuit Court judges to terms of six years. The same provision of the Constitution states that "offices other than the sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance." Judges, again treated as a completely distinct institution, are subject to no such action.

Ampersand, Inc. v. Finley, 61 Ill.2d 537 (1975)*

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*Consistent with this careful and deliberate separation of the judiciary from county offices, Illinois law creates many differences between judicial offices and county offices.

In short, the Objector's shrewd construction of Section 10-2, unsupported by any case law or interpretation other than the Objector's own, is at odds with the enormous body of law – statutory and otherwise – which *rejects* the, in effect, unification of judicial and county offices urged by the Objector. Judicial districts are separate from county districts, according to statute. Judicial nominating petitions must be filed in a different form from that appropriate for county positions, according to statute. Judicial positions are afforded an array of protections and characteristics distinct from those enjoyed by county offices, according to the Illinois Constitution. And, judicial operations are a matter of state, not county concern, according to the Illinois Supreme Court. These principles – undisputed but simply ignored by the Objector – are each fatal to the Objector's claim.

CONCLUSION

For the foregoing reasons, Respondents respectfully move that Objection No. 1 of the Objections of Dorothy Reed, et al., to the nominating papers of the Harold Washington Party be stricken and dismissed with prejudice.

Respectfully submitted,
THE HAROLD WASHINGTON PARTY

/s/ By Nikki M. Zollar
One of its Attorneys

BEFORE THE DULY CONSTITUTED
ELECTORAL BOARD FOR THE
COUNTY OF COOK, ILLINOIS

DOROTHY REED, et al.,	)	
Objector,	)	
	)	No.
v.	)	90 COEB CO 02
	)	
THE HAROLD WASHINGTON PARTY,	)	
	)	
Respondents.	)	

MOTION TO STRIKE AND DISMISS OBJECTION NO. 2

Now comes the Harold Washington Party, and its candidates, by and through their attorneys, and moves the Cook County Officers Electoral Board for entry of an Order striking and dismissing Objection No. 2 of the Objections of Dorothy Reed, et al. ("Objection"). For the reasons stated below, Objection No. 2 is insufficient as a matter of law as it is predicated on an unconstitutional premise. This Board accordingly should strike and dismiss Objection No. 2, and permit the legitimate candidacy of the Harold Washington Party to proceed on the November, 1990 ballot.

BACKGROUND

On August 6, 1990, the Harold Washington Party ("HWP") filed with the office of the Clerk of Cook County, Illinois, nomination petitions for certain offices in the November, 1990 general election ("petitions"). The HWP petitions were filed to form a new political party in Cook County and for the purpose of being placed on the November ballot. Consistent with the requirements of

Ill.Rev.Stat., Ch. 46, Sec. 10-2, the HWP's petition consisted of two separate components, one for each district from which an officer is to be elected.

On August 13, 1990, the Objector filed a petition setting out six (6) objections to the HWP nominating petitions. Objection No. 2 specifically alleged that the HWP nomination papers were void and invalid as they "lack[ed] the necessary minimum of 25,000 valid signatures of electors residing in the suburban area of the County of Cook, as required by Sec. 10-2 of the Election Code."

ARGUMENT

I. THE OBJECTION SHOULD BE DENIED BECAUSE IT IS PREDICATED ON AN UNCONSTITUTIONAL PREMISE

The Objector argues that the HWP lacks 25,000 signatures from suburban Cook County needed to entitle the party to gain access to the election ballot of November, 1990. The Objector's claim is meritless. On August 6, 1990, the Harold Washington Party filed with the Office of the Clerk of Cook County, Illinois, well over 60,000 valid signatures of electors from throughout Cook County in support of placing the Party candidates on the November ballot.

A new political party in Illinois need only gather the signatures of 25,000 eligible voters on its nominating petitios [sic] in order to gain access to the ballot. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979). In holding that the Illinois Election Code is unconstitutional insofar as it requires new political parties in subdivisions of the State to obtain more than the 25,000 signatures necessary for those same parties to appear on the ballot in a statewide election, the Supreme Court has held that such a requirement violated the Equal Protection Clause of the Fourteenth Amendment. 99 S.Ct. 983 at 990-992.

In reaching its decision, the Court reasoned, *inter alia,* that restrictions on access to the ballot must be extremely limited for they place a burden on the " 'right of individuals to associate for the advancement of political beliefs, and the right of qualified voters regardless of their political persuasion to cast their votes effectively.' " Citing *Williams v. Rhodes,* 393 U.S. 23 (1968), the Court went on to state that the freedom to associate as a political party, a right recognized as fundamental, has diminished practical value if the part[illegible] can be kept off the ballot. The Court reasoned that by limiting the choices available to voters, the State impairs the voters' ability to express their political preferences, which, of course, undercuts the single most fundamental significance under our constitutional structure, the right to vote. 99 S.Ct. 983, 990.

Stated simply, Objection No. 2 is no less than an attempt to completely circumvent the unanimous holding of the United States Supreme Court. *Socialist Workers Party.* By interpreting applicable statutes as the Objector has done – to require splitting the County [sic] County of Cook into subdistricts – for purposes of, in effect, requiring not 25,000 but 50,000 signatures for a new party to gain access to the ballot for a Cook County slate – the Objector relies on a claim that cannot withstand constitutional attack.

Moore v. Ogilvie, 394 U.S. 814 (1969); and *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517 (7th Cir.), cert. denied, 423 U.S. 986 (1975), are illustrative. In *Moore*, the Supreme Court struck down the provision of the Illinois Election Code which required independent candidates and new political parties needing 25,000 signatures and which required these parties to obtain at least 200 signatures from each of 50 counties within the state, as violative of the Equal Protection clause. In *Communist Party*, the Seventh Circuit held that the statute, as amended by the legislature after *Moore* to place a 13,000 signature limit on new political party signatures from any one county, was likewise a denial of equal protection. *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517 (7th Cir.), cert. denied, 423 U.S. 986 (1975). Under these well-established principles, it is simply impermissible to impose geographic/minimum signature requirements on new political parties attempting ballot status where the new political party, running *countywide*, has collected over twice as many signatures necessary to run for *statewide* office.

Such a requirement must serve a compelling state interest, or it is invalid. *American Party of Texas v. White*, 415 U.S. 767, 780-781 (1974). Further, that state interest must be achieved by means that do not "unfairly or unnecessarily burden . . . a minority party's . . . interest in the continued availability of political opportunity. *Lubin v. Panish, Registrar-Recorder of County of Los Angeles*, 415 U.S. 709, 716 (1974). As the Court in *Lubin* stated:

> "[t]he interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates

> or parties or both and it is this broad interest that must be weighed in the balance. The right of a party . . . to a place on a ballot is entitled to protection and is intertwined with the rights of voters." *Id.*

In this case, no such interest is or can be offered, nor is the purported requirement narrowly tailored to serve any such interest as the Constitution requires. To require a new county party to obtain *twice* as many signatures as statewide candidates is an affront to the "availability of political opportunity" mandated by the Supreme Court. It can serve no purpose except – by erecting artificial geographic and numerical barriers – to ensure that voters' choices are limited to those conventionally offered. Our system requires more latitude for voter preferences to be exercised, and our Supreme Court has said no less.

As Justice Rehnquist recognized in his concurring opinion in *Socialist Workers Party,* the disparate treatment of candidates in the Illinois Election Code (with respect to signature requirements) "bears no rational relationship to any state interest." *Supra,* at 993. In the instant case, the fundamental rights of at least 60,000 electors would be contravened were this Board to sustain the Objection.

II. SECTION 10-2 IS SO VAGUE AND INCOMPREHENSIBLE THAT IT CANNOT, CONSISTENT WITH THE LAW, BE APPLIED TO DISENFRANCHISE THE HAROLD WASHINGTON PARTY

The Objector makes reference to two provisions of Sec. 10-2 of the Election Code. See Petition at ___. It is not clear that either provision cited sets forth the minimum number of signatures necessary for the HWP to achieve ballot status as a new county-wide political party. What is clear, however, is that the second provision is inapplicable to the present situation: it refers to minimum signature requirements for a district *or* political subdivision for a new political party. Thus, in this instance only the first provision even arguably makes reference to the case at bar, inasmuch as it relates to petitions to form new political parties within a "political subdivision in which offices are to be elected from districts *and* at-large."

The question before this Board, even if signature requirements for county positions in excess of those required for statewide offices are valid, is whether the first provision cited establishes a constitutionally *clear* standard for signatures on new party petitions for political subdivisions. The answer is a resounding "No".

The pertinent provision of Sec. 10-2 of the Election Code states:

> In the case of a petition to form a new political party within a political subdivision in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of a political subdivision and signed only by qualified electors who are residents of such district . . . Each component of the petition from each district from which an officer is to be elected must be signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. *The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision*

> *equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision* at which an officer was elected to serve the political subdivision at large.

After Section 10-2 was redrafted to read as it does above, the Supreme Court, in *Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173 (1979), held that to require a new political party in Illinois to collect more than 25,000 signatures on its nominating petitions was unconstitutional. By requiring the petition to be signed by a "total of qualified voters of the entire political subdivision equaling in number not less than 5% of the number of voters who voted at the next preceding regular election . . . ", the statute is directing collection of substantially more than 25,000 signatures. In fact, even that part of the provision which speaks to "signed qualified voters of the 'district' equaling in number not less than 5% of the number of voters who voted at the next preceding regular election . . . ", requires collection of over 25,000 signatures.

Assuming, arguendo, that this Board can somehow overcome the constitutional deficiencies of this statutory provision, it must still attempt to answer the question: which subsection applies? – That which speaks to collection of signatures, including all components, or that which speaks to separate districts? We submit that, unfortunately, this question cannot be resolved. The statute, even if embracing constitutional mathematics, does not embrace constitutional clarity. As stated by Justice Rehnquist, in referring to the Illinois Election Code, Section 10-2: "[t]he courts having knocked out key panels in an otherwise symmetrical mosaic, it is not surprising that *little sense can be made of what is left." Socialist Workers Party,* at 993.

Given this fact, the provision cannot be used to disenfranchise the 60,000 voters who have sought placement of the HWP on the ballot. *In Merz v. Municipal Officers Electoral Board,* 50 Ill. Dec. 520 (1st Dist., 1981), the Appellate Court was called upon to interpret that provision of the election code (Section 10-3), which purported to set out a standard for the minimum number of signatures needed to be obtained by an independent candidate to secure placement on the ballot. The Court held that despite the fact that the candidates failed to comply with the minimum statutory signature requirement *under the interpretation of the Appellate Court,* where the candidates had demonstrated at "least a minimal appeal to the voters" and the statutory provision was almost incomprehensible, the "interest of justice . . . are best served by allowing . . . [the] candidates to appear on the ballot. . . ." The hopeless ambiguity and internally contradictory nature of Section 10-2 requires no less here.

CONCLUSION

For the foregoing reasons, the Respondents respectfully move that Objection No. 2 of the Objections of Dorothy Reed, et al., to the nominating papers of the Harold Washington Party be stricken and dismissed with prejudice.

Respectfully submitted,
THE HAROLD WASHINGTON PARTY

/s/ By Nikki M. Zollar
One of its Attorneys

BEFORE THE DULY CONSTITUTED ELECTORIAL [sic] BOARD FOR THE COUNTY OF COOK, ILLINOIS

DOROTHY REED, et al)
Objectors,) No. 90 COEB
) CO 02
v.)
)
THE HAROLD WASHINGTON)
PARTY,)
)
Respondent.)

MOTION TO STRIKE AND DISMISS OBJECTION NO. 3 OF OBJECTOR'S PETITION

Now comes the HAROLD WASHINGTON PARTY and Moves this Board to Strike and Dismiss Objection No. 3 of the objector's petition, and in support of their Motion states as follows:

1. The respondents admit that the HAROLD WASHINGTON PARTY is an established political party in the City of Chicago as defined by Article 10 of the Illinois' election code.
2. The respondents admit that the nomination papers filed on August 6, 1990 for County Wide offices for the November 6, 1990 election are filed as a New political party by the HAROLD WASHINGTON PARTY which is established in the City of Chicago.
3. The respondents deny that these nomination papers directly violate the express mandate Article 10, of the Election Code. The respondents affirmatively state that Section 10-5(2) in pertinent part states as follows:

> " . . . (S)uch party shall not bear the same name as, nor include the name of any established political party as defined in this article. *This prohibition does not preclude any established political party from making Nominations in those cases in which it is authorized to do so.*" (Emphasis added)

In this case, David Reed, Sr., HAROLD WASHINGTON PARTY Chairman, and Nancy Jefferson, Co-founder and Charter Member of the HAROLD WASHINGTON PARTY, and other officers of the HAROLD WASHINGTON PARTY expressly authorized the Chairman to file Nominating Petitions at the County Level in the name of the HAROLD WASHINGTON PARTY and support these Nominations for County Wide office on November 6, 1990. See the affidavits of David Reed, Sr. and Nancy Jefferson attached hereto and made a part hereof by reference and marked as Exhibits "A" and "B" respectively.

Therefore the prohibitions expressed in the objectors petitions regarding the use of the Same Name as any established political party is inapplicable here since the Established HAROLD WASHINGTON PARTY expressly authorized the use of the Same Name for the new political party running Slates of Candidates for County Wide offices for the November 6, 1990.

Moreover, the objectors find no relief in the Case Law they have cited. It is clear that the primary purpose of this Law is Not to Confuse Voters who are voting in Elections for Candidates in the same political subdivisions. The objectors have routinely cited the case of *Ballentine v. Bardwell,* 132 ILL App. 3d 1033, 478 N.E.2d 500 And *Doty V. Representation for Every Person (REP) Party,* 97

ILL App.3d 316, 422 N.E. 2d1156. Neither case is on point and both are clearly distinguishable on the facts.

In *Ballantine,* the party was a different party using an established partys' name and different people making up the New Party. While in *Doty,* the REP Party was a New Party with a name that was so similar to that of the Republican Party that the Court would not allow the use of the name for fear of confusing or misleading the voters. In addition, in neither case was it the same people and the same party expressly authorizing the established party chairman to expand from a City Wide Party to a County Wide Party with the same name.

Objectors Objection No. 3 of their petition has no merit in fact or the Law and accordingly should be stricken and dismissed.

Wherefore the HAROLD WASHINGTON PARTY, respectfully request this Board to Strike and Dismiss Objection No. 3 of the Objectors Petition.

Respectfully Submitted,

/s/ Roosevelt Thomas
Roosevelt Thomas, one of the
Attorneys for the
HAROLD WASHINGTON PARTY
1 North LaSalle Street, Suite 2065
Chicago, IL 60602
(312) 641-0860

EXHIBIT A

STATE OF ILLINOIS) SS
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE COUNTY OF COOK, ILLINOIS

DOROTHY REED, et al)
Objectors,) No. 90 COEB CO 02
v.)
THE HAROLD WASHINGTON PARTY,)
Respondent.)

AFFIDAVIT OF DAVID REED, SR.

I, DAVID REED, SR., on oath, depose and state:

1. That I am a resident of the City of Chicago, Court of Cook, and I reside at 951 East Hyde Park Boulevard, Chicago, Illinois.
2. I am a registered voter at the above stated address.
3. I am a member Chairman of the HAROLD WASHINGTON PARTY, an established political party in the City of Chicago which ran candidates in 1989.
4. I was elected Chairman of the HAROLD WASHINGTON PARTY in 1990 and authorized by my party to run a slate of candidates for County Wide offices for the November 6, 1990 election.
5. On August 6, 1990, the HAROLD WASHINGTON PARTY expanded from a Chicago party to a County wide party by filing a slate of candidates to run for county wide office.

6. That the Nominating petitions filed on August 6, 1990 by the HAROLD WASHINGTON PARTY were filed as a new party because that is the only method that the Statute provides for the party to expand from an established political party in the City of Chicago to a County Wide political party.
7. That no provision in the election Code provides for the expansion of an established City Wide political party to run slates of candidates County Wide, therefore, the only method for our party to expand to a County Wide party is to file on the County Level as a new political party.
8. The HAROLD WASHINGTON PARTY which is an established political party in the City of Chicago is the SAME HAROLD WASHINGTON PARTY who filed as a New Political Party for County Wide slates of candidates for the November 6, 1990 election.
9. This Affidavit is made in support of the HAROLD WASHINGTON PARTY'S motion to strike and dismiss Objection 3 of the objections filed in Petition No. COEB-CO-02.
10. Further your affiant sayeth not.

DAVID REED, SR.

"OFFICIAL SEAL"
Richard L. Barnett
Notary Public, State of Illinois
My Commision Expires 11/21/93

Signed and Sworn Before me
This 20th day of August, 1990.

NOTARY PUBLIC

EXHIBIT B

STATE OF ILLINOIS) SS
COUNTY OF COOK)
)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE COUNTY OF COOK, ILLINOIS

DOROTHY REED, et al)
Objectors,) No. 90 COEB CO 02
)
v.)
THE HAROLD WASHINGTON PARTY,)
)
)
Respondent.)

AFFIDAVIT OF NANCY JEFFERSON

I, NANCY JEFFERSON, on oath, depose and state:

1. That I am a resident of the City of Chicago and County of Cook, and reside at 2841 West Jackson Street, Chicago, Illinois.

2. I am a registered voter at the above mentioned address.

3. I am one of the original founders and Charter Members of the HAROLD WASHINGTON PARTY which ran a candidate for Mayor in Chicago in the 1989.

4. That I voted for David Reed, Sr. to be the new Chairman of the HAROLD WASHINGTON PARTY and authorized him to run a slate of candidates for County Wide Office for the November 6, 1990 election.

5. I support Party Chairman David Reed, Sr., and the expansion of the HAROLD WASHINGTON PARTY from a city wide party to a county wide party.

6. I support the slate of candidates of the HAROLD WASHINGTON PARTY for county wide offices for the November 6, 1990 election.

7. This affidavit is made in support of the HAROLD WASHINGTON PARTY'S motion to strike and dismiss Objection 3 of the objectives filed in Petition No. 90 COEB CO-02.

8. Further your affiant sayeth not.

NANCY JEFFERSON

Signed and Sworn Before me
This 20th day of August, 1990.

NOTARY PUBLIC

"OFFICIAL SEAL"
Richard L. Barnett
Notary Public, State of Illinois
My Commision Expires 11/21/93

STATE OF ILLINOIS) SS
COUNTY OF COOK)

BEFORE THE COOK COUNTY BOARD OF ELECTION

DOROTHY REED, ET AL,	)	No. 90COEB
OBJECTORS,	)	COO2
	)	Presiding, Hon.
VS.	)	Stanley J.
THE HAROLD WASHINGTON	)	Kusper, Cook
PARTY, (HWP),	)	County Clerk;
RESPONDENT.	)	Hon. Aurelia
	)	Pucinski Cook
	)	County Circuit
	)	Court Clerk;
	)	and Ernesto
		Borgess.

MOTION OF THE HWP TO STRIKE AND DISMISS THE OBJECTIONS BECAUSE SAID OBJECTIONS ARE PRIMA FACIE FRAUDULENT.

* * *

[Caption Omitted]

MOTION OF THE H.W.P. TO STRIKE AND DISMISS

Now comes the H.W.P., Respondent, by and through its Co-Counsel, R. Eugene Pincham, and respectfully moves this Honorable Board of Election to strike and dismiss the alleged objections of paragraphs 5, and each subparagraph thereof, and paragraphs 6, pages 5 thru 14, of the alleged objections of Dorothy Reed, et al., Objectors, for the reasons that *said alleged objections and the 6,000 "Appendix-Recapitulation"* sheets submitted therewith and in support thereof, clearly reveal that said 6,000

"Appendix-Recapitulation" sheets are all the exact-same – photostatic copies of one original *"Appendix-Recapitulation"* sheet, the new-modern-revised-1990 illegal and fraudulent *Roundtabling* Objection Procedure; and said *6000 "Appendix-Recapitulation"* sheets are manifestly and obviously prima facie flagrantly fraudulent; and for such other and further reasons as hereinafter set forth.

* * *

[Signatures Omitted]

SUGGESTIONS IN SUPPORT OF H.W.P.'S MOTION TO STRIKE AND DISMISS THE ALLEGED OBJECTIONS OF PARAGRAPHS 5 AND 6.

In support of the H.W.P.'s Motion to Strike and Dismiss the alleged objections of Paragraphs 5 and 6 because the 6000 "Appendix-Recapitulation" sheets submitted in support thereof are patent-prima facie-flagrant massive fraud, the H.W.P. respectfully represents unto this Honorable Election Board,

1. Paragraphs 5,(a)(b),(c),(d), pages 9-10 of the objections, allege in pertinent part that:

> "The (HWP) nomination papers are insufficient in fact and in law for the following reasons:
>
> (a) Said (HWP) nomination papers contain the names of numerous persons who did not sign in their own proper person, and these signatures are not genuine, as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated *"Signature Not* Proper and Not Genuine," attached hereto and made a part hereof."

> (b) Said (HWP) nomination papers contain the names of numerous persons who are not in fact duly qualified and registered voters at the addresses shown Illinois (sic) as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated "Signer Not Registered at Address Shown," attached hereto and made a part hereof."
>
> (c) Said (HWP) nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said City of Chicago on the city petitions as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated "Signer not in District", (Chicago Component), attached hereto and made a part hereof,"
>
> (d) Said (HWP) nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said suburban area of Cook County on the suburban petitions as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated "Signer Not In District" (Suburban Component), attached hereto and made a part hereof * * * "

2. The 6000 objections *Appendix-Recapitulation* sheets, Nos. 1-6000 purportedly are the Objector's recapitulations of the corresponding 6000 HWP petitions, Nos. 1-6000, and the signatures thereon.

3. Significantly however, the Objectors fail to state who did the *recapitulation*, who prepared the *Appendix-Recapitulation* sheets, how, under what circumstances, when or by whom the recapitulation and or appendix were prepared.

4. The 6000 *Appendix-Recapitulation* sheets, above referred to and submitted in support of said objections, are all patent, obvious, prima facie, flagrant, fraudulent, duplicate-photostatic copies of one and the same original, the new, modern, 1990, illegal roundtabling objecting procedure.

5. Practically, each and all of the Objector's *Appendix-Recapitulation* sheets 1 thru 6000, reveal, under the column "Signer not registered at address shown" the exact and same:

(1) At Line 1, the X protrudes at the right bottom into the left column designated "Signer not in District:

(2) At Line 4, the X at the bottom right does not extend to the bottom of line 4:

(3) At line 4, there is a vertical line at the left side of the column: .

(4) At line 7, the X at the bottom left extends beyond the column line and into the number 7 line.

(5) At line 10, the X at the left bottom also extends across the column line and into the No. 10 column, and does not extend to the bottom line of the column.

6. Practically, each and all of the Objector's *Appendix-Recapitulation* sheets 1 thru 6000, reveal under the column "Signature not proper person and not Genuine", the exact and same:

(1) At line (1) the bottom right X extends into the adjacent right column, designated "Incomplete Address."

(2) At line (7) the bottom left of the X extends into the adjacent left column, designated "Signer not in District."

(3) At line (8) the upper left of the X extends into the adjacent left column, designated "Signer not in District" and also extends into line 7.

(4) At line (8) the bottom right of the X extends into the right adjacent column, designated "incomplete Address."

7. From the foregoing, as well as a mere cursory examination of the Objector's 6000 *Appendix-Recapitulation* sheets, it is patently obvious that that they, each and all, are photostatic duplicate copies of one and the same original.

8. From the foregoing, it is obviously apparent that the Objector photocopied an original Appendix-Recapitulation sheet which then had the X's inserted in lines 1 thru 10, under the columns "Signer not registered at Address Shown" and "Signatures not proper person and not Genuine", and that thereafter the *Appendix-Recapitulation* photostatic copies were numbered at the top left under "Sheet No.", numbers 1 thru 6000.

9. Although all the Objectors' 6000 *Appendix-Recapitulation* sheets contain the additional columns "Signer not in District", "Incomplete Address", "Improper Circulation", "Duplicate", "Circulator Circulated Dem. Petitions", "Circulator Circulated Rep. Petitions", "Circulator Signed Rep. Petitions", "Signed Dem. Petitions," "Signed Rep. Petitions," "Duplicate Signatures," "Other Circulator Not Registered." Yet, not a single X is placed in any of

said columns in the Objectors 6000 *Appendix-Recapitulation* sheets, an honest, mathematical computer improbatility [sic] – no – an impossibility.

10. From the above and foregoing, all the Objectors' 6000 *Appendix-Recapitulation* sheets are obvious photostatic-duplicate copies of an original, the new modern – 1990 illegal roundtabling objecting procedure.

11. These Objector's 6000 *Appendix-Recapitulation* sheets are a despicable, reprehensible and intolerable attempted fraud on this Honorable Election Board for which this Honorable Board should rightly hold the Objectors in contempt of this Honorable Election Board, and the HWP so prays.

12. Moreover, on August 13, 1990 when the herein mentioned objections were filed, no one had checked or compared any address or signatures on the HWP petitions with any address or signature of any registered voter on the official voters' registration card, commonly referred to as the binder, and therefore there could not have thereby been a determination that the "Signer (was) not registered at Address Shown," or that the "Signature (was) not the Proper Person and not Genuine."

13. Additionally, no one checked with or ascertained from any signature or any circulator of the H.W.P. petitions or from any other source that such signature was "Not registered at the Address Shown," or that the "Signature (was) not (that of the) proper person and not Genuine."

14. Although paragraph 5(e) at page 10 of the objections allege that

> "Said (HWP) nomination papers contain the names of numerous persons who signed the petition more than once, the second and any subsequent signatures being invalid. The duplicate signatures are more fully set forth in the *Appendix-Recapitulation* under the column designated "Duplicate Signature," attached hereto and made a part hereof * * * "

Nevertheless, the Objectors' 6000 photostatic illegal, fraudulent roundtable objection sheets do not indicate or set forth any duplicate signatures or any duplicate names.

15. As previously stated in paragraph 8 herein, regarding the objections of paragraph 5,

subparagraph (f)	"Incomplete Address"
subparagraph (g)	"Petitions not Signed by Circulator"
subparagraph (h)	"Forged Circulators' Signatures"
subparagraph (i)	"Circulator not Registered (voters)
subparagraph (j)	"Non Resident Circulators"
subparagraph (k)	"Circulator of Suburban Petitions Reside Outside the Suburban Area"
subparagraph (l)	"Circulator Address Incomplete"
subparagraph (o)	"Circulator did not appear before Notary,"

barely any of the Objectors' *Appendix-Recapitulation* sheets set forth; contain or indicate any such circumstance.

16. Ch. 46, Section 10-8, B, Ill. Revised Statute, provides in pertinent part, as follows:

> "The Objectors' Petition * * * shall state fully the nature of the objections to the Certificate of Nomination or nominating papers or petitions in question."

17. Paragraphs 5, subparagraphs A thru S, and paragraphs 6 do not "state fully the nature of the objection to the (HWP) nominating papers" as required by aforementioned statute, for which reason said paragraphs should be stricken and dismissed, and the HWP so prays.

18. The Honorable Judge Kusper of this Honorable Election Board astutely and correctly observed and stated on Tuesday, Jan. 2, 1990, in another challenge of nominating petition, the following:

> "CONVERSELY, WE COULD HAVE SOMEONE FILE AN OBJECTION PURE SHOTGUN WITH ABSOLUTELY NO BASIS AT ALL AND WE WOULD SIT HERE AND LISTEN TO THE ARGUMENTS AND THEN WE WOULD SEND IT OUT FOR A BINDER CHECK ON SIXTY-SOME ODD HUNDRED SIGNATURES ON A PURE FISHING EXPEDITION WITH NO BASIS AT ALL TO SEE WHAT WE COULD FIND. AND THAT WOULD BE WASTING THE ASSETS OF THE OFFICE INVOLVED, THE OFFICES INVOLVED."

19. In paragraph 5, subparagraph p, pages 12-13, the Objectors' falsely assert, and in the total absence of any supportive substantive factual allegation, that "the objections specified clearly evidence a patter of fraud, false swearing and a total disregard of the Illinois Election Law * * * on the basis of the pattern of fraud, false swearing and total disregard of the Illinois Election

Code." The Objectors objected to all the HWP petition signatures; and because said Objectors' allegations are false and totally unsupported by any substantive factual allegations, as required by the aforesaid statute, paragraph P should be stricken and dismissed, and the HWP so prays.

20. The "clear evidence of a pattern of fraud, false swearing and a total disregard of the Illinois Election Law" are the Objectors' new, revised, modern, 1990 6000 false and fraudulent roundtable photostatic-duplicate *Appendix-Recapitulation* sheets, previously specified, discussed and established herein.

21. Because the Objectors' following allegations of paragraph 5, subparagraph (g), page 13, are totally factually unsupported.

> "that the results of a pre-objection review of all the petition sheets circulated by Mary King Criss, Will Lawrence, Dino McNeal, Obie Roberts, Larry Smith and Barbara Williams evidence a pattern of fraud, false swearing, forgeries, irregularities permeating their petition sheets and a total disregard for the integrity of the electoral process and that their circulator's oath be found by this Board as incredible and that all the remaining signatures on their petition sheets be stricken in their entirety."

Said allegations should also be stricken and dismissed, and the HWP so prays.

22. A mere cursory look at HWP petitions Nos. 269, 709, 720, 750 to 768, 774, 775 and 3373 clearly reveals that said petitions are for Cook County and Chicago offices, and the objectors' contrary and false allegations of paragraph 5, subparagraph (r) at page 13, that said sheets

> "are in fact petition sheets which relate to those candidates to be elected from outside the city of Chicago and therefore all signatures on said sheets, insofar as they pertain to those candidates to be elected from the city of Chicago, should be stricken in their entirety,"

are factually unsupported and are adverse to the face of said petitions, for which reasons the objections thereto should be stricken and dismissed, and the HWP so prays.

23. Likewise, a mere cursory examination of HWP petitions Nos. 324-331, 1198, 2111 and 4063 discloses that said petitions are for County and city offices for which Chicago voters may vote, and therefore the Objectors' contrary allegations of Paragraph 5, subparagraph S, pages 13-14, that

> "sheets 324 to 331, 1198, 2111 and 4063 from the petition component that includes those candidates to be elected from the city of Chicago, which are in fact non-conforming petition sheets which include candidates to be elected to the office of Commissioner of the Metropolitan Water Reclamation District of Greater Chicago, Illinois. Therefore, these non-conforming sheets, which do not contain a complete slate of candidates to be elected from the County of Cook, are invalid and should be stricken in their entirety,"

are false, factually unsupported and should therefore to stricken and dismissed, and the HWP so prays.

24. Paragraph 6 at page 14 of the objections falsely assert, and in the total absence of any substantive factual supportive allegations, that

> "The Objectors further state that fifteen percent of all signers to the petitions for the nomination of the Harold Washington Party were examined

> with the result that 53% of that amount were found to be invalid and contrary to the requirements of the Election Code.
>
> Accordingly, it is clear that the number of invalid signatures to the petitions for nomination of the Harold Washington Party is so large as to demonstrate a conscious disregard of the statutory requirements and demonstrate strongly that virtually all of the signatures to those petitions are invalid and fail to meet the requirements of the Illinois Election Code."

25. The Objectors do not set forth how or in what manner, or by whom, or when "15% of all signers to "the petitions for the nomination of the Harold Washington Party were examined."

26. As previously stated herein, no one compared the HWP petition signatures with the official voters' signatures in the binders, no one checked with or talked to the HWP petition signators or petition circulators, or anyone else.

Thus, the Objectors' false and factually baseless assertions that an examination of 15% of the signers of the HWP petitions revealed "that 53% of that amount were found to be invalid and contrary to the requirements of the should be stricken and dismissed, and the HWP so prays.

27. Again, it is the Objectors, by and thru their aforesaid alleged objections and their 6000 false and fraudulent photostatic *Appendix-Recapitulation* sheets, who "demonstrate a conscious-disregard by the statutory requirements * * * and fail to meet the requirements of the Illinois Election Code."

28. From and by reason of the above and foregoing there is no reason and no factual or legal basis has been asserted, shown or established for a "full scale (or for any other) binder review, as requested by the Objectors, and such request should therefore be denied, and the HWP so prays.

29. The HWP respectfully prays, by reason of the above and foregoing, that each and every request of the HWP herein before prayed be granted and that the Objectors' objections to the HWP petitions be stricken, dismissed and held for naught.

* * *

[Signatures and Certification omitted]

David Reed

/s/ R. Eugene Pincham
R. Eugene Pincham

Subscribed and sworn to before me this *20th* day of *August 1990.*

Notary Public

Seal

My Commission Expires:___

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

OBJECTIONS TO THE NOMINATION PAPERS)
OF THE HAROLD WASHINGTON PARTY, A)
NEW POLITICAL PARTY, AND TO EACH OF) No.
THE FOLLOWING CANDIDATES OF THE) 90
HAROLD WASHINGTON PARTY:) COEB
) CO
COUNTY-WIDE) 02
BARBARA J. NORMAN)
JANICE H. ROBINSON)
DONALD PAMON)
HELDIA R. RICHARDSON)
TOMMY BREWER)
CHARLES W. ALEXANDER)
DOROTHY C. HOGAN)
WILL LAWRENCE)
KENNETH G. HOPKINS)
)
INSIDE THE CITY OF CHICAGO)
R. EUGENE PINCHAM)
ROBERT E. PINCHAM, JR.)
BARBARA J. NORMAN)
PERCY V. COLEMAN)
VIVIAN D. STEWART-TYLER)
JAMES A. DEANES)
DINO F. McNEAL)
MARY KING CRISS)
DAVID T. PERSONS)
HELEN E. JONES)
)

OUTSIDE THE CITY OF CHICAGO)
ROBERT E. BROOKS, JR.)
MELLO SAM H. CLORA)
JUDY MARIE HAWTHORNE)
CHESTER LeSURE)
CELIA DUNCAN)
DON C. PASSMORE, JR.)
BOBBIE J. SMITH)
)

MEMORANDUM IN SUPPORT OF THE VERIFIED OBJECTORS' PETITION AND IN RESPONSE TO PETITIONER'S MOTIONS TO STRIKE OBJECTIONS

I. FAILURE TO FILE A COMPLETE SLATE OF CANDIDATES FOR ALL OFFICES TO BE FILLED IN THE POLITICAL SUBDIVISION OF THE COUNTY OF COOK INVALIDATES THE HAROLD WASHINGTON PARTY NOMINATION PAPERS. (Paragraph 1(a) of the Objectors' Petition)

§10-2 of the Election Code requires that:

> "In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each *district* from which an officer is to be elected. . . . Each sheet of such petition must contain a *complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.*" (Emphasis added)

§1-3(6) of the Election Code defines a Political subdivision as a "unit of local government". Article VII §1 of the Illinois Constitution defines unit of local government to include counties. Hence, the County of Cook is a political subidivision [sic] in terms of §10-2. Therefore, the Harold Washington Party must "field a complete list of candidates" for all offices to be filled at the ensuing general election.

§1-3(14) of the Election Code defines "district" as:

> "any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and *judicial districts, judicial circuits, county board districts,* municipal and sanitary district wards, school board districts, and precincts."
> (Emphasis added)

Chapter 34 Ill.Rev.Stat. §2-6001 provides for the election of 15 Cook County Commissioners every four years "by the legal voters of Cook County". . . . §2-6001 states further that ten of said commissioners shall be elected from legal voters of the City of Chicago and five commissioners shall be elected from legal voters of the towns outside the City of Chicago.*

The petition of the Harold Washington Party to form a new political party in the County of Cook has been filed, consisting of two separate components: (i) inside the City of Chicago and (ii) the towns outside the City of Chicago. Both components list candidates to be elected at large by legal voters of the County of Cook *with the*

---

* Currently the composition of the Cook County Board of Commissioners is seventeen – ten commissioners being elected within the City of Chicago – seven commissioners from the suburban area outside of Chicago; this pursuant to District Court Order following the decennial census for 1970 and 1980.

exception of judicial candidates. The towns outside the City of Chicago component additionally lists candidates to be elected in the towns outside the City of Chicago *with the exception of judicial candidates*.

By filing said petition components listing different candidates for the two different districts the petitioners are estopped from claiming that the City of Chicago and the towns outside the City of Chicago are not separate districts in terms of §10-2. Stated otherwise, §10-2 requires "separate components for each district from which an officer is to be elected." Petitioners have complied with this statutory provision, but have failed to file "a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large" and have further failed to have each component " . . . contain the names of those candidates to be elected from the particular district."

Article VI, §1 of the Illinois Constitution provides that the first judicial District consists of Cook County. Article VI, §3 of the Illinois Constitution provides that three Supreme Court judges shall be selected from the First Judicial District. Article VI, §5 of the Illinois Constitution provides that the number of Appellate judges to be selected from each judicial District shall be provided by law. Regarding Circuit Court judges, Article VI, §7 of the Constitution provides that the First Judicial District (Cook County) shall constitute a judicial circuit. The Illinois Act relating to the "circuit courts" state that "(The) County of Cook shall be one judicial circuit." (Ill.Rev.Stat., Ch.37, §72.1) In other words, the Cook County judicial circuit is comprised of the County of

Cook. Hence, Article VI of the Illinois constitution provides that Supreme, Appellate and a segment of the Circuit Court judges shall be elected from the entire County of Cook.

Paragraph 1(a) of the Objectors' petition alleges that the nomination papers are invalid for failure to list Harold Washington Party candidates for the judicial office on page 4 of the objectors' enumerated petition. Attached as Exhibit A is a list of the judicial offices to be elected at large by electors of the political subdivision of Cook County as certified by the Clerk of Cook County. The petition at issue omits these judicial candidates; hence the petition is invalid.

In this regard, the decision of *Anderson v. Schneider*, 67 Ill.2d 165, 365 N.E.2d 900 (1977) stands for the proposition that the requirement that a new political party petition must contain a complete slate did not necessitate removal from the ballot of the names of all candidates when only one candidate out of a full slate was found to be ineligible as a candidate. However, the majority points out "the General Assembly, contrary to the position of both dissents, did not exact that there be a complete list of *eligible* candidates, *but only a complete list of candidates*." (365 N.E.2d 900 at 905). The nomination papers at issue fail even to meet this Supreme Court standard of a "complete list of candidates".

II. FAILURE TO FILE A COMPLETE SLATE OF CANDIDATES FOR ALL OFFICES TO BE FILLED IN THE CITY OF CHICAGO DISTRICT AND THE TOWNS OUTSIDE THE CITY OF CHICAGO DISTRICT.

(Paragraphs 1(b) and 1(c) of the Objectors' Petition)

In addition to the failure to list Cook-County-wide judicial offices, the Harold Washington Party nomination papers fail to (a) list judicial offices to be elected from the City only on the City of Chicago district component and (b) further fails to list judicial offices to be elected from the towns outside the City of Chicago district component. These judicial vacancies are listed on attachment A to this memorandum.

The filers of the Harold Washington Party nomination papers failed to meet their clear duty to file a full judicial slate in each of the County of Cook components as based upon the Illinois Constitution's Judicial Article and the legislative history of Ch. 37 Ill.Rev.Stat. which descends therefrom.

Article VI of the Illinois Constitution of 1970, §2 and 7 provides that the Cook County Judicial Circuit shall be divided into three separate units for the purpose of selecting Circuit Court judges, unless otherwise provided by law. These units are comprised of the following districts 1. Cook County (for judges to be elected at large) 2. Chicago and 3. That portion of the County referred to by the statute as the towns outside Chicago.

In this regard, Ch. 37 Ill.Rev.Stat. §72.42 was adopted as amended by P.A. 77-1814 §2 effective. July 1, 1978 and sets forth the number of judges allocated to each of the three units of the Cook County Judicial Circuit.

Specifically, the County of Cook shall have 83 resident judges. Twenty-seven of those resident judges shall be elected from the unit comprised of the territory of the Circuit Court of Cook County outside the corporate limits of Chicago and 56 resident judges shall be elected from the unit within the corporate limits of Chicago. A vacancy in the office of resident judge of the Circuit Court of Cook County shall be filled from the unit in which it occurs." (Ill.Rev.Stat. 1987, Ch. 37, Par. 72.42(4).) Furthermore, "[w]hen a vacancy in the office of resident circuit judge is filled by election, the election shall be for the appropriate county or unit, and not for the entire circuit." Ill.Rev.Stat. 1987, Ch. 37, 72.42-1.

This entire statutory scheme was amended by the Illinois Legislature upon the passage of P.A. 86-786, effective September 6, 1989 to provide for a different and more complex scheme for subdivision of the Cook County Judicial Circuit into individual subcircuits. However, the pertinent provisions of P.A. 86-786 were recently held unconstitutional by the Illinois Supreme Court in *Chicago Bar Association v. State Board of Elections,* No. 69823.

This decision returned the pertinent provisions of Ch. 37 Ill.Rev.Stat. to the *status quo ante* by reinstating the three separate units of the Cook County Circuit and the staffing formula contemplated therefore under Ch. 37, §72.42 sub.par.4.

In summary, the Harold Washington Party nomination papers fail to contain the requisite judicial candidates in the City of Chicago's only district component, and further fails to list the requisite judicial candidates in the towns outside Chicago district component (see attachment "A"). Since the nomination papers at issue fail to meet this standard of a complete list of candidates in each district component, the Harold Washington Party and all candidates appearing on said nomination papers are not eligible for ballot placement.

The Motion to Strike and Dismiss Objection 1 is without merit. Indeed, the assertion by the HWP that judicial offices are state offices rather than county offices is a red herring and is urged in direct contravention of Section 10-2 of The Election Code which deals specifically with the subject matter of the formation of new political parties. Specifically, The Election Code provides that:

> "In the case of a petition to form a new political party within a political subdivision in which *officers* are to be elected from districts and at large . . . such petition must contain a complete list of the names of the candidates of the party for *all offices* to be filled in the political subdivision at large . . . . " (Emphasis added)

As demonstrated earlier, Cook County is a "political subdivision" and judicial offices are to be filled within Cook County. It is crystal clear, therefore, that some of the offices to be filled at the next election are judicial offices and that the election will be from "districts and at large". Thus, the statute does not exclude judicial offices, but on the contrary, requires that the petition to form a new political party list candidates for "all offices to be filled in the political subdivision at large". In addition, The Election Code (Sec. 1-3[14]) expressly defines district as including not only "county board districts", but also "judicial districts" and "judicial circuits". At best, the argument asserted is disingenuous. The HWP cites only a portion of the statute and conveniently omitted the critical portion. The statute provides as follows:

> "Any group of persons hereafter desiring to form a new political party throughout the State, or in any congressional, legislative or judicial district, *or in any other district or in any political subdivision (other than a municipality) not entirely within a single county,* shall file with the State Board of Elections a petition, as hereinafter provided; and *any such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk, . . .* " (Emphasis added)

The underscored portions of the statute demonstrate that any person desiring to form a new political party within any county, such as exists in this case, must file that petition with the County Clerk. Even if one construes the statute as indicating that judicial candidates must file with the State and not with the County, the fact remains that judicial candidates must still be included in order to comply with the statute's requirement to field a complete list of candidates.

In short, the requirements to establish a new political party are set forth in Article 10 of The Election Code and specifically in Section 10-2. No other provision of The Election Code deals with that subject matter. Accordingly, petitions to form new political parties must meet each and every requirement of Section 10-2. That section clearly provides that candidates of the new party for "all offices to be filled" must be contained in the petition. The petitioners' own actions further demonstrate the requirement that the names of candidates for "all offices" be set forth in their petition in that they filed a separate petition and slate of candidates for the Chicago Metropolitan Water Reclamation District. Thus, the petitioners have admitted that candidates for all offices must be named.

III R. EUGENE PINCHAM WAS DEFEATED FOR NOMINATION AS A DEMOCRATIC CANDIDATE FOR THE OFFICE OF PRESIDENT OF THE COOK COUNTY BOARD AT THE MARCH 20, 1990 PRIMARY ELECTION, AND IS THEREFORE INELIGIBLE TO BE A CANDIDATE OF THE HAROLD WASHINGTON PARTY.

(Paragraph 4 of the Objectors' Petition.)

Pursuant to the pertinent provisions of §10-2 of the Election Code:

> "A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as *a* candidate of a new political party for election in that general election." (Emphasis added)

One of the listed candidates for Member of the Board of County Commissioners of Cook County on the HWP nomination papers, R. Eugene Pincham, was a Democratic Party candidate on the March 20, 1990 Party Primary ballot running for the office of President of the County Board of Commissioners as well as County Commissioner from inside the City of Chicago. Mr. Pincham was defeated in his candidacy for President of the County Board of Commissioners and another Democratic Party candidate was proclaimed as the successful Democratic Party nominee by the Cook County Canvassing Board.

In view of the aforesasid [sic] provisions of §10-2, Mr. Pincham is "ineligible" and not qualified to run as a new political party candidate for election at the November 6, 1990 General Election.

However, on August 6, 1990, R. Eugene Pincham, as required by §10-5 of the Election Code, filed a sworn statement of candidacy averring that he was "qualified" to run for office as a candidate of the Harold Washington Party. Objectors submit that Mr. Pincham, however, is not legally qualified as a Harold Washington Party new political party candidate and, therefore, his statement of candidacy is false and invalid and his nomination papers must be stricken.

It is the function of this Board to determine and follow the intent of legislative acts. *Lipsey v. Michael Reese Hospital*, 46 Ill.2d 32, 262 N.E.2d 450 (1907) In ascertaining the legislature's intention, the entire statute must be considered, as well as the evil to be remedied and the object to be attained. *People v. Bratcher*, 63 Ill.2d 534, 349 N.E.2d 31 (1976) The consequences resulting from various constructions of an act must also be taken into consideration. *People ex. rel. Holland v. Edelman*, 27 Ill.App.3d 793, 327 N.E.2d 338 (1975) It is to be presumed that the legislature in passing legislation did not intend absurdity, inconvenience or injustice. *Illinois Crime Investigation Commission v. Buccieri*, 36 Ill.2d 556, 224 N.E.2d 236, *cert. denied*, 389 U.S. 848, 88 S.Ct. 75, 19 L.Ed.2d 117 (1967) Therefore, where several constructions may be placed upon a statute, this Board should select that which leads to a logical result and avoid those which would be absurd. *Board of Education v. Community High School District No. 211*, 89 Ill.App.2d 481, 232 N.E.2d 316 (1967)

> *However, where the language of a statute is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the statute must be accepted on its face. Totten v. State Board of Elections,* 79 Ill.2d 288, 403 N.E.2d 225, 227 (1980); *Jay v. Boyd,* 351 U.S. 345 (1956); *Mason v. Cutkomp,* 15 Ill.App.2d 378, 146 N.E.2d 382 (1957); *Salmans v. Dutz,* 16 Ill.App.2d 356, 148 N.E.2d 17 (1958). Sutherland, Statutory Construction, Chapter 46. (Emphasis added)

"On its face", according to §10-2 of the Election Code, R. Eugene Pincham, "A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election is ineligible for nomination as a candidate of a new political party for election in that general election. . . . "

And whether Mr. Pincham was successful as a Democratic nominee for the office of Member of the Board of County Commissioners of Cook County is indeed irrelevant. Since the statute is clear and unambiguous, it must be interpreted in accordance with the language of the statute. See e.g. 34 ILP Statutes, §116. To do so, renders Mr. Pincham ineligible as a candidate for nomination of the Harold Washington Party and further renders his statement of candidacy invalid, since his conduct is in direct violation of the Election Code. The only possible remedy for such violation is the removal of R. Eugene Pincham's name from the November 6, 1990 ballot.

IV. THE HWP PETITION SHOULD BE STRICKEN BECAUSE IT CONTAINS NO MORE THAN 7,560 SUBURBAN SIGNATURES WHERE THE ELECTION CODE REQUIRES A MINIMUM OF 25,000 SIGNATURES

The County of Cook consists of two separate districts. Namely (1) the area located inside the City of Chicago, and 2) the area located outside of the City of Chicago. Each are constitutes a district as defined in Section 1-3(14) of the Election Code which defines districts as:

> any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts."

Section 10-2 of the Election Code provides in relevant part:

> "In the case of a petition to form a new political party within a political subdivision in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of a political subdivision and signed only by qualified electors who are residents of such district. . . . *Each component of the petition from each district from which an officer is to be elected must be signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district*

> *at which an officer was elected to serve the district."* (Emphasis added.)

Section 10-2 also provides that:

> [W]henever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number or signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

Section 10-2 provides that a petition to form a new political party State-wide "shall be signed by 1% of the number of voters who voted at the last preceding State-wide general election or 25,000 qualified voters whichever is less."

Thus, Section 10-2 of the Election Code requires persons wishing to form a new political party within the County of Cook to file nomination petitions containing 25,000 signatures of qualified voters residing within the City of Chicago as well as 25,000 signatures of qualified voters residing outside the City of Chicago.

Because the HWP obtained no more than 7,560 suburban signatures the HWP clearly failed to obtain the necessary 25,000 suburban signatures required under Section 10-2 of the Election Code. The HWP nomination papers should, therefore, be stricken.

The HWP, however contends that a new political party in Illinois need only obtain the signatures of 25,000 qualified voters in order to gain access to the ballot, citing *Illinois State Board of Elections v. Socialist Workers'*

Party, 440 U.S. 173, 99 S.Ct. 983 (1979) as authority for this proposition. However, HWP's reliance upon this case is misplaced because the U.S. Supreme Court in that case simply held that the State of Illinois could not impose a more stringent signature requirement upon new political parties and independent candidates seeking office within the City of Chicago than it did for independent candidates and new political parties seeking State-wide office without some reason for the more stringent requirement. The Court held:

> The signature requirements for independent candidates and new political parties seeking offices in Chicago are plainly not the least restrictive means of protecting the State's objectives. The Illinois Legislature has determined that its interest in avoiding overloaded ballots in statewide elections is served by the 25,000-signature requirement. Yet appellant has advanced no reason, much less a compelling one, why the State needs a more stringent requirement for Chicago.
>
> * * *
>
> We therefore hold that the Illinois Election Code is unconstitutional insofar as it requires independent candidates and new political parties to obtain more than 25,000 signatures in Chicago. (99 S.Ct. 983, 991)

Following the Supreme Court's decision in the *Socialist Workers' Party* case, the Illinois General Assembly amended Section 1C-2 of the Election Code. See Public Act 81-926, effective September 22, 1979. The legislature added the following sentence to paragraph four of Section 10-2:

> "However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

The Legislative Debates demonstrate that the legislature added this sentence to paragraph four of Section 10-2 in order to bring Section 10-2 of the Election Code into conformity with the Supreme Court decision in the *Socialist Workers' Party* case. See, Comment of Senator Rhodes on June 25, 1979, Senate Debates 91st General Assembly, Day 72, pages 194 to 195.

The General Assembly, however, did not amend that portion of Section 10-2 which requires each component of a petition to be signed by not less than 5% of the qualified voters who voted in the preceding regular election in such district or 25,000 signatures, whichever is less. Requiring such a minimal number of signatures serves the State's interests in preserving the integrity of Illinois electoral process and regulating the number of candidates on the ballot. The U.S. Supreme Court has found both these interests compelling. See *American Party of Texas v. White,* 415 U.S. 767, 782 no. 14, 94 S.Ct. 1296, 1307 (1974).

The HWP contends that the State may not impose a signature requirement in excess of 25,000 qualified voters. The 7th Circuit, however, has rejected this argument on at least two occasions. See *Bowe v. Board of Election Commissioners v. City of Chicago,* 614 F.2d 1147 (7th Cir. 1980) and

Gjersten v. Board of Election Commissioners of City of Chicago, 791 F.2d 472 (7th Cir. 1986). In fact the Seventh Circuit stated in *Bowe:*

> "The plaintiffs apparently take the position that the *Socialist Workers' Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivison [sic]. We cannot agree." (614 F.2d 1147, 1151)

In *Bowe* and *Gjersten* the Seventh Circuit has consistently rejected such a "litmus paper test approach", *Bowe, supra* at 1152 and *Gjersten, supra* at 477.

The *Bowe* case, supra, is also instructive for another reason. The requirement that a County-wide "new political party" meet a 5% signature requirement in both the (i) "inside Chicago" and (ii) "suburban only" districts, is a proper legislative one, to wit: to assure that the new political party can show "a significant modicum of support before a new political party may appear on the ballot." (614 F.2d at 1151)

> Thus substantial minimum signature requirements serve compelling State interests, and the only question is whether the specific percentage chosen serves the State's compelling interests in a reasonable manner." (614 F.2d at 1151)

The 5% – 25,000 "suburbs only" district signature requirement is directed to that end and, respectfully, this Electoral Board, as seen, does not even have authority to consider the statutory signature requirement's reasonableness and constitutionality. For this reason, the

Board must apply the statutory 25,000 suburban signature requirement exactly as written.

(Parenthetically, it should be noted that it is already known that the HWP has city of Chicago substantial support, for it made the ballot there and became an established political party in that city. Ergo, the only County-wide new party question herein is whether the HWP has the requisite substantial suburban support.)

Section 10-2's 25,000 signature requirement requires a new political party running county-wide to demonstrate at least minimal support in both the City of Chicago and suburban Cook County. As noted previously, this requirement is not only reasonable but also serves compelling State interest. Thus, the 25,000 signature requirement for both the City of Chicago and suburban Cook clearly comports with the *Social Workers' Party* case and its progeny, and should be followed. Because the HWP failed to obtain the requisite number of suburban signatures, the petition should be stricken.

Even if the HWP were *arguendo* allowed to improperly contend that they need only 25,000 total signatures, the petitions would still be invalid. Since the legislature has manifested a clear legislative intent that the "outside Chicago" district component must have 5% support, and since it is elementary that the Courts must give effect to the intent of the legislature, the Board herein would still have to allocate the 25,000 requirement by the percentage of the total vote in the City of Chicago and the "suburbs only" to the total county vote at the last relevant election.

For example, in 1988, if the city had 55% of the total county vote, and the suburbs only 45%, then the 7,560 signatures that were filed for the suburbs is still too short. (25,000 x 45% = 12,250 required minimum signatures.)

V. THE HAROLD WASHINGTON PARTY IS AN ESTABLISHED POLITICAL PARTY IN THE CITY OF CHICAGO AND THEREFORE THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY VIOLATES THE SECTION 10-5 PROHIBITION AGAINST A NEW POLITICAL PARTY BEARING "THE SAME NAME" OF AN ESTABLISHED POLITICAL PARTY. THE HWP NAME SHOULD BE REMOVED FROM THE BALLOT.

(Paragraph 3 of Objectors' Petition.)

The Harold Washington Party ran a candidate for mayor of the City of Chicago, the only partisan office up for election, at the April 4, 1989 Special Mayoral Election. At this Election, the Harold Washington Party received well over 5% of the total votes cast for mayoral office. In fact, the Harold Washington Party candidate Timothy Evans received 41.11% of the total votes cast for Mayor; hence the HWP became an "established political party", pursuant to, and as defined by Article 10 – §10-1 and §10-2 – of the Illinois Election Code. (See Attachment B; a certification from the Chicago Board of Elections.)

These nomination papers directly violate the express mandate of Article 10-5 of the Election Code which states that a new political party petition for nomination:

> "(S)hall not bear the same name as, nor include the name of, *any* established political party as defined in this article." (Emphasis added)

The nomination papers at issue bear the name of an already "established political party," the "Harold Washington Party" and, as such, violate the §10-5 prohibition against a new political party bearing "the same name" of an established political party.

The Third Division of the First District Appellate Court has dealt with §10-5(2) of the Illinois Election Code. In *Doty v. Representation For Every Person (REP) Party,* (1981) 97 Ill.App.3d 316, 52 Ill.Dec. 947, 422 N.E.2d 1156, this Court looked to section 10-2 and 10-5 of the Illinois Election Code in finding the abbreviation "REP" included the name of an established political party (i.e., the Republican Party).

The Court went on to decide the *Doty* case solely as a matter of statutory construction citing §1002 of Chapter 1, Ill.Rev.Stat. 1979, and *Franzese v. Trinko* (1977), 66 Ill.2d 136, 5 Ill.Dec. 262, 361 N.E.2d 585.

> "Applying these principles to the instant case we believe that the plain and ordinary meaning of the language of the statute which prohibits use of a party name that includes the name of an established party, prohibits as well including such name in any abbreviated form."
>
> . . .
>
> Petitioner argues that it is the purpose of §10-5(2) to restrict a new political party from using the name of an established political party in order to avoid the perpetration of a fraud upon the electorate. We agree." *Doty,* 422 N.E.2d 1156, 1157

Additionally, See *Vasquez v. Municipal Officers Electoral Board,* 115 Ill.App.3d 1014, 450 N.E.2d 1379 (3rd Dist. 1983). In *Vasquez,* the candidates' nomination petitions requested that they be designated as the "Action IV Party," a new political party with respect to an election to be held on April 12, 1983 in the village of Steger, Illinois. The "Action Party" had run candidates for election in the village for many years, under the labels of "Action Party," "Action Party II," and "Action Party III." "Action Party III" had slated candidates in the 1981 election and received more than 5% of the vote cast for the village officers such as to render it an established political party within the purview of section 10-2 of the Illinois Election Code. Ill.Rev.Stat. 1983, Ch. 46, Par. 10-2.

The *Vasquez* court first determined that "Action IV" was the same party which was designated as "Action III" and in prior years under the "Action" label and that it did not become a new political party merely by adding a Roman numeral at the end of the party name. Accordingly, the court found that the candidates failed to qualify and had wrongfully sought nomination under §10-2 as a new political party.

Additionally, in *Ballentine v. Bardwell*, 478 N.E.2d 500, 132 Ill.App.3d 1033 (First Dist. 1985) the court stated:

> "It is undisputed that the name "New United Idea Party" included the name of an established political party, the "United Idea Party," which fielded a slate of candidates at the municipal election held in Robbins, Illinois, on April 12, 1983, such as to constitute an established political party under the Code." Ill.Rev.Stat. 1983, Ch. 46, Par. 10-2).

The *Ballentine* Court ruled the "New United Idea Party" designation off the ballot, but allowed the *candidates* thereof to appear on the ballot, individually, without party designation. Accordingly, this Honorable Board should order that the Harold Washington Party designation should be stricken from the ballot.

The motion of the HWP to dismiss this objection is specious. First, it has admitted, in Paragraph 7 of the Affidavit of David Reed, Sr., "That no provision of the Election Code provides for the expansion of an established City-wide political party to run slates County-wide." That is a startling admission, since it establishes conclusively that there is no statutory authority for the established HWP to simply expand and run slates of candidates County-wide. Further, it has acknowledged that a new political party shall not bear the same name as, nor include the name of any established political party.

In their motion to strike and dismiss Objection #3 of Objectors' Petition, the HWP candidates maintain that the prohibition against a new political party using an established political party's name "does not preclude any established political party from making nominations in those cases in which it is authorized to do so." The HWP candidates then argue further that the "established Harold Washington Party expressly authorized the use of the same name for the new political party . . . "

The HWP candidates however, overlook the prohibition in Section 10-2 of the Election Code which provides that once a party has become an established political party by receiving more than 5% of the votes at an election within a political subdivision, *such party's candidates shall thereafter be nominated "under the provisions of the laws regulating the nomination of candidates of established* *political parties at primary election and political party conventions . . . " i.e., by primary procedures or caucus procedures described in Section 7-1 of the Election Code.* Furthermore, Section 10-1 of the Election Code provides that candidates for election by established parties may not be nominated under the provisions of Article 10 of the Election Code, its provision for nomination applying only to new parties.

Hence, the established Harold Washington Party is precluded by virtue of Sections 10-1 and 10-2 from authorizing any nominations of the candidates of its party pursuant to the new political party provisions of Article 10. *Accord.* See *Vasquez v. Municipal Officers Electoral Board,* 115 Ill.App.3d 1014 (3rd Dist. 1983).

Further, on its face, the very petition which is filed is one "to form a *new* political party" in Cook County [emphasis added]. It can hardly contend, therefore, that it should not be held accountable to meet all of the statutory requirements for the establishment of a "new" political party including the protection against using an established political party's name.

VI. SINCE OBJECTORS' 15% SAMPLING OF THE PETITION SHEETS ESTABLISHED THAT OVER 50% OF THE SIGNATURES ARE INVALID, THEN THIS ELECTORAL BOARD SHOULD ALSO INVALIDATE SIGNATURES NOT SPECIFICALLY OBJECTED TO.

(Paragraph 6 of the Objectors' Petition)

The court decisions of: *Canter v. Cook County Officers Electoral Board,* 170 Ill.App.2d 354, 523 N.E.2d 1299 (First.Dist. 1988); *Fortas v. Dixon,* 122 Ill.App.3d 697, 462

N.E.2d 615 (First.Dist. 1984) and *Huskey v. Municipal Officers Electoral Board,* 156 Ill.App.3d 201, 509 N.E.2d 555 (First Dist. 1987) stand for the proposition that when the sheets of a nominating petition submitted by purported and actual circulators evidence a patter of fraud, false swearing and total disregard for the mandatory requirements of the Election Code, the sheets purportedly circulated by that individual should be stricken in their entirety.

The Objectors have submitted evidence of false swearing by Exhibit "A" attached to Objectors' petition. In this regard, §10-4 of the Illinois Election Code sets forth the requirements of a new political party petition which must be complied as a prerequisite to being placed on the ballot. (Ill.Rev.Stat. 1989, Ch. 46, par. 10-4) A petition includes sheets containing signatures of qualified primary electors "in their own proper persons only." (Par. 10-4) The circulator must sign a statement under oath at the bottom of each petition sheet, certifying that the signatures on the sheet were signed in her present and are genuine. (Part. 10-4) The requirements of section 10-4 are mandatory. (*Schumann v. Kumarich* (1981), 102 Ill.App.3d 454, 58 Ill.Dec. 157, 430 N.E.2d 99; see also *Bowe v. Chicago Electoral Board* (1980, 79 Ill.2d 469, 38 Ill. Dec. 756, 404 N.E.2d 180 (finding paragraph 7-10, a section with a similar circulator's affidavit requirement, to be mandatory). These provisions of §10-4 are clearly violated here, where circulators permitted individuals to sign the Harold Washington Party nominating petition, even though they are not eligible signatories.

§10-4 of the Illinois Election Code further provides that the result of non-compliance with the petition requirements is that, "No signature shall be valid or be counted in considering the validity of sufficiency of such petition unless the requirements of this Section are complied with". (Ill. Rev. Stat. 1985, Ch. 46, par. 10-4)

The Harold Washington Party candidates moved to strike the objections of Paragraph 5 and Paragraph 6, Pages 5 through 14 on the ground that the Appendix Recapitulation sheets "are manifestly and obviously prima facie flagrantly fraudulent".

However, the movants fail to cite even one court decision authorizing an electoral board to strike objections on the grounds advanced in said motion. Under Section 10-9(2) of the Election Code, this Honorable Board is required to "hear and pass upon objections to the nomination of candidates. . . . " Objectors respectfully submit that an electoral board ruling upon a motion that the objections are "prima facie flagrantly fraudulent" lacks statutory authority to dismiss such objections relating to the validity of signatures on a petition without performing objector's requested *binder check*. Objectors have filed a Verified Petition which prima facie states sufficient grounds to remove all candidates from the ballot for failure to file the requisite number of valid signatures. In this regard, pursuant to the adopted rules of this Honorable Board, specifically paragraph 6:

> " . . . nomination papers and objections shall be compared with those permanent registration records by either the Office of the County Clerk or the Chicago Board of Election Commissioners.
>
> . . . "

The allegations of the Appendix Recapitulation Sheets require that a binder check ensue to determine the validity of the signatures and likewise, to determine the validity of the objections.

The HWP motion also ignores the "pattern of fraud" section of the objection (see also, Argument VI. of this Memorandum). As stated therein, the objectors' specific sampling of 15% of the petition sheets established that over 50% of the petition signers on those petition sheets were not registered voters. Accordingly, the objectors have requested that this Board invalidate entire sheets and not just individual signatures because of the clear evidence of fraud permeating the petition circulator's process. Consistent with this, and to preserve this objection, the objectors have requested that the genuineness of all the signatures on the nominating petitions must be subjected to a binder check.

The myriad and specific objections to the validity of the signatures on the petitions as set forth in detail in Exhibit "A" filed simultaneously with the objections establishes that 15% of the total signatures were examined by the objectors and that 53% of that amount were invalid for various reasons. Based upon the pattern of fraud, false swearing and total disregard of the Illinois Election Code established in Exhibit "A", the objectors submitted their Appendix Recapitulation in which they assert, as they are entitled to under the law, that all of the signatures are invalid. Thus, the Appendix Recapitulation, rather than reflecting indiscriminate challenges, reflects, based upon the inordinate number of invalid signatures set forth in Exhibit "A", that all signatures should be scrutinized by this Board through a binder check.

To summarize this argument, the movants improperly seek to inject a new standard for dismissing signature objections – a standard which has no basis in law. The validity of the signature objections in the Appendix Recapitulation sheets can only be determined by a binder check and reference to the official lists of registered voters. But the validity of such objections cannot be predetermined and dismissed upon the movants' mere conclusory epithets of "despicably reprehensible and intolerable attempted fraud." Moreover, by virtue of Exhibit "A" attached to the objections and incorporated therein, the objectors have challenged the genuineness of all signatures on the nominating petition. Their motion to strike objections should, therefore, be denied.

Hence, objectors request, in light of the above cited authority that this Honorable Board invalidate entire sheets and not just individual signatures because of clear evidence of fraud permeating the petition circulator's process.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Honorable Board declare that the nomination papers of the Harold Washington Party and the nominations of all candidates appearing thereon be declared insufficient, null and void; not in compliance with the laws of the State of Illinois and lack the statutory minimum number of valid signatures for ballot placement and hence, are invalid, and that this Honorable Board enter its decision that the Harold Washington Party and the names of all candidates appearing on said nomination papers not be printed on the official ballot for the General Election to be held on November 6, 1990.

Respectfully submitted,

Dorothy Reed, Valerie A. sutton,
Patton L. Feichter, Ervin S.
Ricks and David Barrera

By /s/ George N. Leighton
George N. Leighton,
Their Attorney

* * *

[Exhibits omitted in printing]

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

OBJECTIONS TO THE NOMINATION PAPERS)
OF THE HAROLD WASHINGTON PARTY, A)
NEW POLITICAL PARTY, AND TO EACH OF)
THE FOLLOWING CANDIDATES OF THE)
HAROLD WASHINGTON PARTY:)
)
COUNTY-WIDE)
BARBARA J. NORMAN)
JANICE H. ROBINSON)
DONALD PAMON)
HELDIA R. RICHARDSON)
TOMMY BREWER)
CHARLES W. ALEXANDER)
DOROTHY C. HOGAN)
WILL LAWRENCE)
KENNETH G. HOPKINS)
)
INSIDE THE CITY OF CHICAGO)
R. EUGENE PINCHAM)
ROBERT E. PINCHAM, JR.)
BARBARA J. NORMAN)
PERCY V. COLEMAN)
VIVIAN D. STEWART-TYLER)
JAMES A. DEANES)
DINO F. McNEAL)
MARY KING CRISS)
DAVID T. PERSONS)
HELEN E. JONES)
)

OUTSIDE THE CITY OF CHICAGO)
ROBERT E. BROOKS, JR.)
MELLO SAM H. CLORA)
JUDY MARIE HAWTHORNE)
CHESTER LeSURE)
CELIA DUNCAN)
DON C. PASSMORE, JR.)
BOBBIE J. SMITH)

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF OBJECTIONS #2 AND #3 OF THE VERIFIED OBJECTORS' PETITION AND IN OPPOSITION TO THE MOTIONS TO STRIKE THESE OBJECTIONS

Now come the Objectors, by and through their attorney George Leighton, and hereby supplement their previous memorandum and state as follows:

I.

In paragraph 2 of the Objectors' petition, it is alleged that the outside-the-city component of the HWP nomination papers contain on their face no more than 7,560 purported valid signatures of electors residing in this district. The HWP proponents have not disputed this fact. The Objectors further allege that the pertinent provisions of §10-2 would require the necessary minimum of 25,000 signatures of electors in this area.

The Respondents allege, citing the *Socialist Workers' Party* decision as authority, that to require 25,000 for the outside-the-city component of the petition and an additional 25,000 signatures for the inside-the-city component would be unconstitutional since only 25,000 signatures are required for State-wide candidacy.

In Argument VI of the Objectors' memorandum, the Objectors maintain that the HWP's reliance on the *Socialist Workers' Party* decision is misplaced, and that the State of Illinois can constitutionally impose a more stringent signature requirement upon new political parties seeking ballot access for officers elected by electors county-wide and from districts within a County than the signature requirements for State-wide officers.

The Objectors do not waive this argument. However, additionally it need be noted that §10-2 requires that each component of the petition for *each* district from which an officer is to be elected must be signed by qualified voters equaling not less than 5% of the number of voters who voted at the next preceding regular election at which an officer was elected to serve the district.

In this regard, 1986 was the last election at which officers were elected to serve the Cook County Board districts of inside the city of Chicago and the towns outside the city of Chicago. Attached hereto are the official final results from the County of Cook, which reflects that 1,476,370 voters cast ballots county-wide, that 841,085 ballots were cast in the city and that 635,285 ballots were cast in the district outside the city. Based on these figures, the city and the outside the city vote percentages are 57% and 43%, respectively.

In the *Socialist Workers' Party* case, the District Court enjoined enforcement of the 5% provision insofar as it mandated more than 25,000 signatures. This order was affirmed by the Court of Appeals and the Supreme Court of the United States.

Assuming, in arguendo, that the State could not constitutionally require more than 25,000 signatures county-wide, then applying the 43% factor to a 25,000 maximum, the HWP would still require a minimum of 10,750 signatures (or 43% of the 25,000). This approach would comport with the *Socialist Workers' Party* decision.

Therefore, Objectors request that this Honorable Board not only find that the outside-the-city component lacks the requisite 25,000 signatures and is therefore invalid, but to further find that even if 25,000 signatures were the maximum signatures required county-wide, that the outside-the-city component of the petition on its face would still contain insufficient valid signatures for ballot placement.

II.

An additional point to be addressed herein is the effect of invalidating the outside-the-city component of the petition on the validity of the HWP nomination papers as a whole. The Objectors submit that the invalidation of the outside-the-city component of the petition would dictate that the nomination papers be deemed invalid in their entirety.

In this regard, the decision of *Anderson v. Schneider*, 67 Ill.2d 165, 365 N.E.2d 900 (1977), stands for the proposition that the §10-2 requirement that a new political party petition must contain a "complete list of candidates" did not necessitate the removal of the names of all candidates on the petition from the ballot when only one listed candidate is ineligible. However, the *Anderson* decision would not provide support for striking only the outside-the-city "component," but rather the entire petition must fall. Stated otherwise, the "complete list of candidates" statutory construction involved in *Anderson* does not and cannot provide authority for striking only the outside-the-city "component."

First of all, in distinction to *Anderson*, the issue herein does not concern *ineligibility* of any candidate to run but rather a completely different statutory provision; namely, insufficient signatures on a statutorily required "district" "component" of the petition. In *Anderson*, in fact, there were more than sufficient signatures for ballot placement. Indeed, the entire focus of the *Anderson* decision was sufficient valid signatures coupled with the ineligibility of merely one of the many candidates listed. Secondly, the *Anderson* petition did not consist of two statutorily mandated *separate* district components as here, but rather only one uniform nominating petition.

Moreover, §10-2 requires that when a new political party is fielding candidates from both at-large and from districts; "The entire petition, *including all components*, must be signed by . . . " (Emphasis Added) the requisite 5% of the voters in each district. In pertinent part, Article 10 of the Election Code provides:

> "In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of *separate components for each district from which an officer is to elected. Each component* shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of such petition must contain a complete list of the names of

> the candidates of the party for all offices to be filled in the political subdivision at-large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. *Each component of the petition for each district* from which an officer is to be elected must be signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all component, must be signed by a total of qualified voters of the entire political subdivision equaling in number not less than 5% of the number of voters who voted at the next preceding general election in such political subdivision at which an officer was elected to serve the political subdivision at-large.
>
> *The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at the next ensuing election such list . . . of party candidates . . .* " (Emphasis Added)

Therefore, if "such petition" contains the requisite 5% signatures for "*each* component of the petition for *each* district," the statute provides that the new political party shall be placed on the ballot in the county. If, however, "such petition" does *not*, as here, contain the requisite 5% signatures for "each" "district" "component," then §10-2 calls for the new political party and all its candidates *not* being placed "upon the ballot." An Electoral Board would not have the authority to legislate or rewrite the statute to achieve the improper, peculiar and unprecedented result of allowing the HWP to run as a county-wide party in the City of Chicago only.

Since the outside-the-city district component is invalid on its face, the entire petition is invalid according to the above-cited provisions of §10-2.

III.

An additional point to be addressed is the sanction to apply to new political party candidates when they violate the Article 10 prohibition against using the same name of an established political party. As cited in Section V of the Objectors' Memorandum, the decisions of *Doty v. Representation For Every Person (REP) Party*, 97 Ill.App.3d 316, 52 Ill.Dec. 947, 422 N.E.2d 1156 (1981); *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014, 450 N.E.2d 1379 (3rd Dist. 1983) and *Ballentine v. Bardwell*, 478 N.E.2d 500, 132 Ill.App.3d 1033 (First Dist. 1985) – all allowed the candidates to appear on the ballot without party designation.

However, in the three above-cited cases, the times for filing new political party petitions and independent petitions were the same. But, in the instant case, the time for filing independent candidate petitions was December 11-18, 1989 (See Chap. 46, §7-12 and §10-3). Since the petitions in this case were not filed until long after the date for filing of independent candidate petitions, the candidates cannot, as a matter of law, be on the ballot under any label. Cf. *Stevenson v. State Board of Elections*, 638 F.Supp. 547 (N.D.Ill 1986) aff'd 794 F.2d 1176 (7th Cir. 1986)

Therefore, Objectors submit that, as in the instant objection, when the filing period for independent candidates precedes the filing period for new political party candidates and the new political party uses the same name as an established political party, then the proper sanction would be to remove from the ballot all candidates appearing on said petition.

/s/ George N. Leighton
George N. Leighton,
Attorney for the Objectors

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA,

Petitioners,

-vs-

No. 90 CO 00238

STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES Constituting the COOK COUNTY OFFICERS ELECTORAL BOARD; and BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR. and BOBBIE J. SMITH,

Respondents.

PETITION FOR JUDICIAL REVIEW OF ELECTORAL BOARD DECISION
90 COEB-2

NOW COME the petitioners DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA, by and through their attorney George N. Leighton, and petition this Honorable Court, pursuant to Ill. Rev. Stat. Chapter 46, §10-10.1, for judicial review of the August 29, 1990 decision of the Cook County Officers Electoral Board ("Electoral Board") overruling the objections of Petitioners to the nomination papers of the Harold Washington Party ("Nomination Papers") and its candidates for: County-wide office; and Members of the Board of Cook County Commissioners inside the City of Chicago only. In support of this petition, Petitioners state as follows:

1. On August 6, 1990, the Harold Washington Party, and the candidates thereof, filed a petition to form a "new political party in the County of Cook" with the Clerk of Cook County. This petition consisted of two separate components:

    a. The first component listed nine (9) candidates for County-wide office and the ten (10) candidates for the office of Member of the Board of Cook County Commissioners inside the City of Chicago only.

    b. The second component listed nine (9) candidates for County-wide office and the seven (7) candidates for the office of Member of the Board of Cook County Commissioners outside the City of Chicago only.

2. On August 13, 1990, Petitioners filed their Verified Objectors' Petition to the aforesaid Nomination Papers with the Clerk of Cook County.

3. Respondents STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES are members of and constitute the COOK COUNTY OFFICERS ELECTORAL BOARD.

4. Respondents BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR. and BOBBIE J. SMITH, are candidates appearing on the Harold Washington Party Nomination Papers.

5. The Objectors' Petition alleged that the Nomination Papers are invalid for the following reasons:

   a. Failure to comply with the pertinent provisions of §10-2 of the Election Code, namely that the Nomination Papers did not contain a complete list of candidates for all offices to be filled in: (1) the political subdivision at-large (County of Cook); (2) the inside-the-City-of-Chicago district and (3) the Outside-the-City-of-Chicago district.

      Specifically, the Nomination Papers fail to list any of the candidates for the judicial offices scheduled to be filled County-wide from the County of Cook, inside the City of Chicago and outside the City of Chicago, at the November 6, 1990 general election. These offices are identified on pages 4-5 of the Verified Objectors' Petition.

b. Failure to comply with the pertinent provision of §10-2 of the Election Code relating to the minimum number of signatures required on each district component of the Nomination Papers.

Specifically, in paragraph 2 of the Objectors' petition, it is alleged that "the 'outside the city of Chicago' district of the nomination papers contain on their face a total of no more than 7,560 purported valid signatures of electors residing in the portion of Cook County outside the city of Chicago . . . " when the statute requires a minimum of 25,000 valid signatures of such electors. Therefore, the Nomination Papers are void and invalid in their *entirety*.

c. The Nomination Papers purport to create a "new political party" in the County of Cook, with the name "Harold Washington Party." By so doing, these Nomination Papers violate the prohibition in §10-5(2) of the Election Code against "new political party" nomination papers bearing the same name as any established political party as defined in Article 10. The Objectors maintained that since the Nomination Papers bear the name of an "established political party" - the Harold Washington Party - they are invalid.

d. The Objectors' Petition further alleged in paragraph 4 that R. Eugene Pincham, a Harold Washington Party candidate for the office of Member of the Board of County Commissioners of Cook County to be elected from the City of Chicago, was ineligible as a Harold Washington Party candidate since he was defeated in his March 20, 1990 candidacy to be the Democratic Party nominee for President of the Board of County Commissioners of Cook County. Consequently, the pertinent provisions of §10-2 of the Election Code would bar such candidacy, and Mr. Pincham, therefore, filed a false statement of candidacy averring that he was qualified to run as a candidate of the Harold Washington Party.

e. Paragraphs 5 & 6 of the Objectors' Petition made allegations as to specific signature objections and requested that a binder check be conducted.

6. On August 29, 1990, the Electoral Board issued its rulings; a copy of this decision is attached hereto as Exhibit A.

7. The Electoral Board granted the motion of the Harold Washington Party to strike the objections dealing with the "failure to file a full slate" (par. 1 of the Objectors' Petition), finding that there was no obligation to include judicial candidates on the Nomination Papers to form a new political party in the County of Cook.

   One member of the Electoral Board dissented, stating "that failure to include judicial candidates violated the complete slate requirement. Thus, I would find these Nomination Papers invalid as well."

   The majority of the Electoral Board erred in not invalidating the Nomination Papers for failure to include a slate of judicial candidates for all offices to be filled in the Cook County political subdivision and for further failure to field the requisite judicial candidates in each of the two districts within the County of Cook, as required by §10-2 of the Election Code.

8. Regarding the failure of the suburban component of the petition to contain on its face the requisite 5% or 25,000 signatures (paragraph 2 of the Objectors' Petition), the electoral board concluded that: "Since the objectors have demonstrated cause to find the nomination papers of the HWP candidates for suburban commissionerships . . . offices invalid, the objections are sustained, . . . "

Objectors however, alleged that the entire set of nomination papers must be deemed invalid, when a component of said nomination papers is invalid.

The electoral board committed error in not enforcing the requirement of §10-2 of the Election Code that the entire petition, *including each of its district components,* must be signed by the requisite member of registered voters. Specifically, having deemed the suburban component of the Nomination Papers invalid, the Electoral Board was obligated to invalidate the Nomination Papers in their entirety and to strike *all* Harold Washington Party candidates from the ballot.

9. As regards objection #3, the electoral board, with one member dissenting, granted the motion of the Harold Washington Party to dismiss the objection that the name "Harold Washington Party" could not be used by the new political party, The Board majority entered this ruling, even though it expressly found that:

> "Section 10-5 prohibits new political party petitions for nomination from bearing the same name as, or including the name of, any established political party as defined in Article 10."

And:

> " . . . the Board finds that the prohibition of §10-5 does extend to the County HWP candidates now before this Board, since the HWP is an established party as defined by Article 10."

And yet, the Electoral Board still refused to apply said prohibitions in § 10-5 to the Nomination Papers, Under the theory that authorization was received from a former candidate. The Petitioners submit that this ruling is in error; that the Nomination Papers should have been invalidated and all candidates should have been stricken from the ballot.

10. In paragraph 4 of the Objections, Petitioners attacked R. Eugene Pincham's eligibility as a Harold Washington Party candidate for County Board Commissioner and alleged a false statement of candidacy in connection therewith. The Electoral Board concluded that since Mr. Pincham won the Democratic Primary for County Commissioner, there was no prohibition against his "switch(ing) parties". The Electoral Board further erroneously found that the "sore loser" statute, although clear and unambiguous, would only have prohibited Mr. Pincham from seeking election as a Harold Washington Party candidate for the office of President of the Board of County Commissioners.

    The Electoral Board erred by misinterpreting the express provisions of §10-2 of the Election Code so as to permit Mr. Pincham, a candidate who was defeated in the Democratic party Election, held on March 20, 1990, to be a Harold Washington Party candidate at the general election.

11. The Petitioners, for the purpose of this action, do not seek judicial review of the Electoral Board rulings relative to paragraphs 5 and 6 of the Objectors' Petition.

12. The Petitioners seek review of each of the Electoral Board rulings identified above, which Petitioners maintained are arbitrary and erroneous as a matter of law, with the exception of those rulings identified in paragraph 11 of this Petition.

WHEREFORE, Petitioners pray that this Honorable court review said rulings of the Electoral Board and reverse or modify the aforesaid rulings, as the case may be, and enter judgment that the Nomination Papers of the Harold Washington Party and that the nomination of all candidates appearing thereon be declared invalid and further enter judgment that the name of the Harold Washington Party and the names of all candidates listed on the

Nomination Papers *not* appear on the November 6, 1990 General Election ballot.

/s/ George N. Leighton
George N. Leighton
Attorney for the Petitioners

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* * *

[Copy Of Electoral Board Decision, attached as an exhibit, omitted in printing.]

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

BARBARA J. NORMAN, JANICE H.)
ROBINSON, DONALD PAMON,)
HELDIA R. RICHARDSON, TOMMY)
BREWER, CHARLES W. ALEXANDER,)
DOROTHY C. HOGAN, WILL)
LAWRENCE, KENNETH G. HOPKINS,)
R. EUGENE PINCHAM, ROBERT E.)
PINCHAM, JR., PERCY V. COLEMAN,)
VIVIAN D. STEWART-TYLER, JAMES)
DEANES, DINO F. McNEAL, MARY) No.
KING CRISS, DAVID T. PERSONS,) 90 CO 00244
HELEN E. JONES, ROBERT E.)
BROOKS, JR., MELLO SAM H.)
CLORA, JUDY MARIE HAWTHORNE,)
CHESTER LeSURE, CELIA DUNCAN,)
DON C. PASSMORE, JR., and)
BOBBIE J. SMITH)
)
Petitioners)
)
-vs-)
)
STANLEY T. KUSPER, JR., AURELIA)
PUCINSKI and ERNESTO D. BORGES)
Constituting the COOK COUNTY)
OFFICERS ELECTORAL BOARD; and)
DOROTHY REED, VALERIE A.)
SUTTON, PATTON L. FEICHTER,)
ERVIN S. RICKS, and)
DAVID BARRERA)
)
Respondents)

PETITION FOR JUDICIAL REVIEW OF ELECTORAL BOARD DECISION 90 COEB-2

NOW COME the petitioners, BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH, by their co-counsel, Roosevelt Thomas and Nathaniel House, Jr., and petition this Honorable Court, pursuant to Ill. Rev. Stat. Ch. 46, Sec. 10-10.1 for Judicial Review of the August 29, 1990 decision of the Cook County Officers Electoral Board sustaining in part, the objections of respondents to the Nominating papers of the Harold Washington Party and its Candidates for county wide office and members of the Board of Cook County Commissioners outside the City of Chicago. In support of this petition, Petitioners state as follows:

1. On August 13, 1990, certain objectors filed six objections to the Nominating Papers of the Harold Washington Party. Among these objections was objection no. [sic] 5 and 6, which stated that every one of the signatures filed by the Harold Washington Party was invalid. On August 20, 1990, Petitioners filed their Motion to Strike and Dismiss objections 5 and 6 because they were "manifestly, and obviously prima facie flagrantly fraudulent." On August 29, after an evidentary [sic] hearing on this issue, the Electoral

Board granted the Petitioners' Motion to Strike and Dismiss objections 5 and 6 because these objections were prima facie fraudulent. The fraud in objections 5 and 6 permeates the entire petition of objections filed by the objectors, and therefore the entire petition of objections should be dismissed.

2. The Electoral Board entered an order filing the nominating papers of Robert E. Brooks, Jr., Mello Sam H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr., and Bobbie J. Smith, as candidates for the Cook County Board of Commissioner to be elected from outside the City of Chicago. This ruling is in error. The Harold Washington Party maintains that: a) That the Party filed more than 60,000 valid signatures; b) It is unconstitutional to require the Harold Washington Party to gather more signatures to field County candidates than it would need to field a slate of candidates for State-wide office; c) It is impermissible to impose geographic/minimum signature requirements; d) The vague election code should be construed to permit the party to field its candidates; and e) The party has demonstrated a modicum of support and deserves to be on the ballot.

3. In regard to the use of the Harold Washington Party name, the Petitioners concur with the decision of the majority of the Electoral Board that the Harold Washington Party name can be used for the November election. However, the Petitioners do not concur with the finding of the Electoral Board when they found in their written opinion that the prohibition of Sec. 10-5 does extend to the County Harold Washington Party. Notwithstanding the proper ruling of the Board, the Petitioners and Board Chairman Kusper (see footnote 10 of Board's Decision) maintain that permission was not needed because there is no established Harold Washington Party in the political subdivision of Cook County.

WHEREFORE, Petitioners pray that this Honorable Court review said rulings of the Electoral Board, and reverse or modify the aforesaid rulings, and enter judgment that entire objector's petition be dismissed, allow the County-wide Commissioners to appear on the ballot for the November 6, 1990 General Election and for such other and further relief as this court deems just.

Roosevelt Thomas, one of the
attorneys for petitioners

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* * *

[Copy of Electoral Board Decision, attached as an exhibit, omitted in printing.]

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

DOROTHY REED, et al.,	)	
Petitioners-Appellees,	)	
v.	)	
STANLEY T. KUSPER, JR., et al.,	)	NO. 1-90-2708
Respondents-Appellants,	)	
v.	)	
BARBARA J. NORMAN, et al.,	)	
Petitioners-Appellants,	)	
v.	)	
STANLEY T. KUSPER, JR., et al.,	)	
Respondents-Appellees.	)	

ORDER

This cause coming to be heard on Respondents-Appellants' motion to stay the enforcement of the order of the circuit court to print the ballots for the November 6, 1990 election without the name of the Harold Washington Party, and the court being fully advised in the premises;

IT IS HEREBY ORDERED that the order of the circuit court entered on September 20, 1990, requiring that the ballots for the November 6, 1990 election be printed without the Harold Washington Party or its candidates appearing on the ballot, be and is hereby stayed until further order of the Appellate Court.

ORDER ENTERED
SEP 26 90

Dom J. Rizzi
Justice

William S. White
Justice

Justice

SUPREME COURT OF THE UNITED STATES

No.
A-309

BARBARA J. NORMAN, ET AL.,

Petitioners

v.

DOROTHY REED, ET AL.

ORDER

An Emergency Petition for Stay of Enforcement of Decision of the Illinois Supreme Court filed October 12, 1990 and for Temporary Restraining Order and injunction has been filed with me in my capacity as Circuit Justice.

Because the Emergency Petition raises a federal constitutional question of sufficient substance to merit the attention of the full Court, I have decided to order that the status quo be maintained for a sufficient period of time to enable this Court to review the matter. The mandate of the Illinois Supreme Court is therefore stayed or, if necessary, recalled, pending further order of this Court.

IT IS SO ORDERED.

/s/ John Paul Stevens
Associate Justice of the Supreme
Court of the United States

Dated this 22nd

day of October, 1990.

SUPREME COURT OF THE UNITED STATES

THURSDAY, OCTOBER 25, 1990

ORDER IN PENDING CASE

A-309 BARBARA J. NORMAN, ET AL. V. DOROTHY REED, ET AL.

The application for stay presented to Justice Stevens and by him referred to the Court is granted to the extent that the August 29, 1990 decision of the Cook County Officers Electoral Board, No. 90COEB-2, is to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 20, 1991

Mr. Burton Stephen Odelson
Special State's Atty-Cook Cty.
3318 West 95th Street
Evergreen Park, IL 60642

Re: Barbara J. Norman, et al.
v. Dorothy Reed, et al.
No. 90-1126
Cook County Officers Electoral Board, et al.
v. Dorothy Reed, et al.
No. 90-1435

Dear Mr. Odelson:

The Court today entered the following order in each of the above entitled cases:

The motion of Independent Voters of Illinois-Independent Precinct Organization for leave to file a brief as amicus curiae in No. 90-1126 is granted. The petition for a writ of certiorari is granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Very truly yours,
/s/ William K. Suter
William K. Suter, Clerk

FILED
JUL 5 1991
OFFICE OF THE CLERK

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No. 90-1435

In The

Supreme Court of the United States

October Term, 1991

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COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,

Petitioners,

vs.

DOROTHY REED, *et al.*,

Respondents.

◆

On Writ Of Certiorari To The Supreme Court Of Illinois

◆

BRIEF FOR THE PETITIONERS

◆

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July 5, 1991

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QUESTIONS PRESENTED

1. Does a restriction on the expansion of city political parties to countywide parties by prohibiting use of the same party name unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Does a requirement that a new party running only in a county obtain a total of 50,000 signatures when statewide candidates need only obtain 25,000 signatures unconstitutionally burden the right to ballot access as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

3. Does a requirement that new party candidates for countywide offices are barred unless the party candidates running in a district of that county also have sufficient petition signatures unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES AND RULE 29.1 LIST

The parties to the proceedings below include the petitioners, the Cook County Officers Electoral Board and its members, David D. Orr[1], County Clerk of Cook County, Illinois, Aurelia Pucinski, Clerk of the Circuit Court of Cook County and Jack O'Malley, State's Attorney of Cook County.[2]

The respondents include the objectors to the Harold Washington Party candidates: Dorothy Reed, Valerie Sutton, Patton L. Feichter, Erwin Ricks and David Barrera.[3]

Certain other respondents herein are the candidates of the Harold Washington Party. These respondents are petitioners in No. 90-1126: Barbara J. Norman, Janice H. Robinson, Donald Pamon, Heldia Richardson, Tommy Brewer, Charles W. Alexander, Dorothy C. Hogan, Will Lawrence, Kenneth G. Hopkins, R. Eugene Pincham, Robert E. Pincham, Jr., Robert E. Brooks, Percy V. Coleman, Vivian D. Stewart-Tyler, James A. Deans, Dino F. McNeal, Mary King Criss, David T. Persons, Mello Sam

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[1] Mr. Orr succeeded Stanley T. Kusper, Jr. as County Clerk on December 3, 1990. He is named as a petitioner herein pursuant to Rule 35.3.

[2] Mr. O'Malley replaces Ernesto D. Borges, Jr., who had participated in the proceedings below as the third member of the Board. He is named as a petitioner herein pursuant to Rule 35.3.

[3] This case has been consolidated with No. 90-1126, *Norman, et al. v. Reed, et al.* Dorothy Reed and the other objectors are also respondents in that case.

LIST OF PARTIES AND RULE 29.1 LIST-Continued

H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr. and Bobbie J. Smith.

The remaining respondents in both cases are the Chicago Board of Election Commissioners and its members, Michael Hamblet, Arnette Hubbard and Raymond Jagielski.

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No. 90-1435

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In The

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COOK COUNTY OFFICERS ELECTORAL
BOARD, *et al.*,

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vs.

DOROTHY REED, *et al.*,

Respondents.

◆

On Writ Of Certiorari To The Supreme Court Of Illinois

◆

BRIEF FOR THE PETITIONERS

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OPINIONS BELOW

The order of the Supreme Court of Illinois has not yet been reported and is reprinted in the appendix to the petition for writ of certiorari at 2a. The supreme court has not issued, and is not expected to issue, the opinion "to be issued at a later date" referred to in the order.[4] The memorandum opinion of the Circuit Court of Cook County, Illinois (Wachowski, J.) has not been reported. It is reprinted in the appendix to the petition for writ of certiorari at 16a. The decision of the Cook County Officers Electoral Board has not been reported. It is reprinted in the appendix to the petition for writ of certiorari at 29a.

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[4] In fact, of the four justices in the Illinois Supreme Court majority, two (Stamos and Ward) have retired and one (Calvo) has died. One justice from the minority (Ryan) has retired. In all, four of the seven justices who participated in the decision are no longer on the court.

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JURISDICTION

The order of the Supreme Court of Illinois was issued on October 12, 1990. Pet. Cert. 2a. On October 18, 1990, the supreme court denied a motion to recall its mandate. Pet. Cert. 1a. No petition for rehearing was filed. The petition for writ of certiorari was filed on March 11, 1991 pursuant to an extension of time granted by Justice Stevens, and granted on May 20, 1991.

The petitioners invoke jurisdiction pursuant to 28 U.S.C. § 1257 (a). The Illinois Supreme Court's order construed the provisions of Ill.Ann.Stat. ch. 46, ¶¶ 10-2 and 10-5 (Smith-Hurd 1991) in a manner contrary to the First and Fourteenth Amendments to the United States Constitution as interpreted by this court.

◆

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievance.

Fourteenth Amendment to the United States Constitution:

No state shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

◆

STATUTES INVOLVED

Ill.Ann.Stat. ch. 46, ¶ 10-1 (Smith-Hurd 1991) (Illinois Election Code)

(Article 10. Making of Nominations in Certain Other Cases) § 10-1. Political parties as hereinafter defined and individual voters to the number and in the manner hereafter specified may nominate candidates for public offices whose names shall be placed upon the ballot to be furnished, as hereinafter provided: However, no nomination may be made under the provisions of this Article 10 by any established political party which at the general election next preceding, polled more than 5% of the entire vote cast in the State, district or unit of local government for which nomination is made. * * *

Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991) (Illinois Election Code)

* * * [A]ny such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk * * * . Any such petition for the formation of a new political party * * * shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in

the * * * political subdivision * * * at the next ensuing election then to be held * * * .

* * *

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of the petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large. * * *

The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at such next ensuing election such list or an adjusted list in accordance with Section 10-11, of party candidates for offices to be voted for * * * in such district or political subdivision less than the State * * * .

* * * If, at such ensuing election, * * * any other candidates of the new political party shall receive more than 5% of the votes cast for the office or offices for which they were candidates at such election * * * in any district or political subdivision, as the case may be, then and in that event, such new political party shall become an "established political party" within * * * such district or political subdivision less than the State, as the case may be, in which such candidate or candidates received more than 5% of the votes cast for the office or offices for which they were candidates. It shall thereafter nominate its candidates for public offices to be filled in * * * such district or political subdivision, as the case may be, under the provisions of the laws regulating the nomination of candidates of established political parties at primary elections and political party conventions, as now or hereafter in force.

Ill.Ann.Stat. ch. 46, ¶ 10-5 (Smith-Hurd 1991) (Illinois Election Code)

All petitions for nomination, shall, besides containing the names of candidates, specify as to each:

* * *

(2) The new political party, if any, represented, expressed in not more than 5 words. However, such party shall not bear the same name as, nor include the name of any established political party as defined in this Article.

This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so.

◆

STATEMENT OF THE CASE

This case concerns the right of the candidates of the Harold Washington Party ("HWP") to be placed on the November, 1990 ballot for election to various offices within Cook County, Illinois, and in a larger sense, the ability of new political parties to gain ballot access.

A. Procedural History

The petitioner, the Cook County Officers Electoral Board ("Board"), is an administrative agency created by Illinois law to hear and pass upon objections to nomination papers filed by candidates for certain public offices. Ill.Ann.Stat. (1989) ch. 46, ¶ 10-9 (Smith-Hurd 1991). In the event its decision is appealed on administrative review to the courts, the Board joins the prevailing party and defends its rationale for the benefit of the reviewing court.

On August 6, 1990, the respondents Barbara J. Norman, *et al.*, ("HWP candidates") filed nomination papers requesting that their names appear on the ballot for various offices. J.A. 4, 5. The HWP fielded candidates for all non-judicial, countywide offices, county commissioners to be elected at large within the City of Chicago ("city commissioners"), and county commissioners to be elected at large from outside the City of Chicago ("suburban commissioners")[5] . J.A. 4, 5.

The respondents, Dorothy Reed, *et al.*, ("objectors"), filed objections to the candidacies of all HWP candidates for the November, 1990 election, alleging that the nomination papers did not comply with various provisions of Article 10 of the Illinois Election Code. J.A. 6. Two of these objections remain relevant to this case: [1] that the name "Harold Washington Party" could not be used by the county candidates, because it was already the name of an "established political party" as defined in § 10-5(2) of the Election Code[6] and [2] that because 25,000 signatures were not submitted for suburban commissioner candidates, the HWP failed to file a "complete slate" for all possible "components" of Cook County, as required by § 10-2 of the Code. J.A. 6.

After considering various motions and concluding an extensive hearing, the Board ruled that all the HWP candidates would remain on the ballot, with the exception of the suburban commissioner candidates. Pet. Cert. 29a. The Board specifically sought to interpret the Election

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[5] Members of the Cook County Board are elected from these two districts pursuant to Ill.Const. transition schedule, § 5(b).

[6] The Illinois Election Code is contained entirely within chapter 46 of the Illinois Annotated Statutes (Smith-Hurd), and the paragraph numbers of the chapter correlate to the section numbers of the Election Code. All statutory citations herein are to the Illinois Election Code, Ill.Ann.Stat. ch. 46, ¶ ___ (Smith-Hurd 1991).

Code in a manner consistent with the constitutional principles previously enumerated by this Court and the United States Court of Appeals for the Seventh Circuit. Pet. Cert. 40a, 48a.

On administrative review, the Chicago Board of Election Commissioners and the Cook County Clerk[7] were joined as parties in order to easily subject them to the jurisdiction of the court for the purpose of enforcing orders relating to ballot printing. R.Vol. 1, C.313.

The Circuit Court of Cook County affirmed the Board's decision in part and reversed it in part. Pet. Cert. 16a. The Circuit Court's decision to remove all HWP candidates rested both on the candidates' failure to include judicial candidates on the slate, which the court found to be "county offices" necessary to complete the "slate" as required by § 10-2, and the party's failure to submit a sufficient quantity of suburban signatures for the suburban component of the slate. Pet. Cert. 26a.

Because of the great public interest in the case and the need to resolve the issues before the impending November election, the Illinois Supreme Court heard the matter on an expedited direct appeal pursuant to Ill.Sup.Ct.R. 302(b). J.A. 2.[8]

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[7] The Clerk was named at this juncture in his ministerial capacity as issuer of the ballots, rather than merely as a member of the Electoral Board.

[8] The HWP first appealed to the Appellate Court for the First Judicial District of Illinois. That court apparently recognized the erroneous analysis of the Circuit Court's decision, because it ordered that the HWP candidates be restored to the ballot pending disposition of the appeal. J.A. 116.

The supreme court issued a brief order affirming the removal of the HWP candidates on the grounds that the party could not use the HWP name countywide, and that the failure of the suburban commissioner candidates to obtain sufficient signatures doomed their running-mates. Pet. Cert. at 2a. The majority's order was joined by four justices. Three justices joined in two separate dissents. The supreme court indicated that a full opinion would follow, but none has yet been issued. *Id.*

Denied relief by the state court of last resort, the HWP candidates filed a Petition for Stay with Justice Stevens in his capacity as Circuit Justice on October 19, 1990. On October 22, 1990, Justice Stevens issued an order stating that the petition "raised a federal constitutional question of sufficient substance to merit the attention of the full Court". J.A. 117. In order that the status quo be maintained during the full Court's review of the case, Justice Stevens granted the petition and recalled the mandate of the Illinois Supreme Court pending further order of the Court. *Id.*

Because the practical effect of this order was to restore the HWP candidates to the ballot, the Electoral Board and election authorities presented additional written arguments to this Court addressing the logistical difficulties in reprinting ballots only days before the election.

On October 25, 1990, the full Court granted the Petition for Stay to the extent that the Board's decision was to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari. J.A. 118.

The election was conducted on November 6, 1990, using ballots modified on an emergency basis to accommodate the HWP candidates. No HWP candidate was elected. However, HWP candidates did receive over 5% of the vote in several races. Section 10-2 of the Illinois Election Code grants such successful parties equal status with the Democratic and Republican parties as "established political parties" in that jurisdiction, entitling them to nominate by primary and take advantage of lower petition signature requirements. See Pet. Cert. 23.

The HWP candidates and the Board's petitions for writs of certiorari were granted on May 20, 1991.

B. The Federal Constitutional Questions

Before the Electoral Board, the HWP candidates moved to dismiss the objection regarding the deficiency in the suburban commissioner petitions, arguing that the objections were based on an "unconstitutional premise." J.A. 41. The HWP relied on *Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173 (1979), *Williams v. Rhodes,* 393 U.S. 23 (1968) and *Moore v. Ogilvie,* 394 U.S. 814, *inter alia,* and urged that under the "well-established" principles of those cases, "it is simply impermissible to impose geographic/minimum signature requirements on new political parties attempting ballot status where the new political party, running countywide, has collected over twice as many signatures as necessary to run for statewide office." J.A. 44.

The Board's decision on this issue rested on the fact that the objectors' position could not be reconciled with the candidates' and their supporters' rights as guaranteed by the United States Constitution. The Board stated:

> The statute is silent on the implementation of the objectors' suggested draconian penalty against a party which fell short in its attempt to field suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it otherwise fulfilled all statutory requirements. The objectors have not directed the Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm.

Pet. Cert. 47a.

Likewise, the Board found that these constitutional principles directed a similar finding with respect to the "same name" objection. The Board stated:

> A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association.

Pet. Cert. 40a.

In the Circuit Court, both the candidates and the Board contended that the statutory interpretation suggested by the objectors would infringe on the candidates' and their supporters' constitutional rights. The candidates' petition for judicial review stated "it is unconstitutional to require the Harold Washington Party to gather more signatures to field county candidates than it would need to field a slate of candidates for statewide office. . . . " J.A. 114.

While the Circuit Court rested its decision on an interpretation of state law and expressly rejected the HWP candidates' constitutional arguments, those arguments went to the merit of the Circuit Court's eventual decision. The Circuit Court stated: "[The HWP candidates] suggest that § 10-2's component aspect is unconstitutional. * * * This case is disposed of on other grounds. The constitutionality of § 10-2 of the Election Code need not be addressed." Pet. Cert. 24a.

In the supreme court, the HWP candidates raised and the Electoral Board argued the same constitutional points.

The supreme court majority's order does not set forth the rationale or legal basis for the decision. However, the dissenting opinions manifest that federal constitutional issues were at the heart of the case, and that the removal of the HWP candidates infringed on constitutionally protected rights. In his dissent, Justice [now Chief Justice] Miller explained:

> The majority's result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979) 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230, which invalidated, on constitutional grounds, an earlier provision in section 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The

> Majority's construction of the statute produces a similar disparity.

Pet. Cert. 14a.

Similarly, Justice Ryan's dissent explicitly recognized that the majority's "narrow and strict construction" impinged on the fundamental rights of the candidates, and that the applicable statutes must be construed liberally. Justice Ryan used the *Socialist Workers* rationale to support his position that the majority's decision impermissibly restricted constitutionally-protected interests. Pet. Cert. 8-9a.

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SUMMARY OF ARGUMENT

The Illinois Supreme Court's unprecedented and unexplained order is at odds with the well-established precedents of this Court governing ballot access for new political parties. If allowed to stand, the Illinois Supreme Court's decision will stymie the formation of new political parties in Illinois.

First, the supreme court's decision prohibiting use of the name "Harold Washington Party" is contrary to both the plain terms of the statute and common sense. Previous HWP candidates received sufficient electoral support in a recent Chicago mayoral election that the party became "established" within Chicago, entitling it to benefits enjoyed by the Democratic and Republican parties. Under the new Illinois Supreme Court ruling, new party names may not be used in a jurisdiction if they have been used in any other town, village or hamlet in the State of Illinois. Under this analysis, new political parties cannot evolve from small areas to a countywide or statewide level.

Second, the Illinois Supreme Court's decision is contrary to this Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979), 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230, which struck down requirements that local candidates obtain more signatures than were required of statewide candidates. In its decision below, the supreme court enforced a "complete slate" requirement for new political parties by removing the entire slate because one portion of the slate had not met the statutory signature quotas. This standard unfairly penalizes entire political parties merely because a few of its individual candidates did not garner sufficiently wide support. It also gives suburban areas a "veto power" over candidates supported in urban areas.

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ARGUMENT

I

THE ILLINOIS SUPREME COURT'S INTERPRETATION OF THE ELECTION CODE IS CONSTITUTIONALLY IMPERMISSIBLE BECAUSE IT IMPOSES CONDITIONS THAT SERVE NO COMPELLING STATE INTEREST.

This Court has long enunciated clear legal principles that prohibit the construction of unreasonable barriers to ballot access. Elections should be free and open, and allow voters to choose from candidates and political parties that have demonstrated an appropriate level of support within the voting jurisdiction. Election laws should not be used to preserve the status quo by unfairly burdening political outsiders with unreasonable barriers to ballot placement. The Illinois Election Code, as interpreted by the Illinois Supreme Court, deprives the residents of Cook County of their constitutional rights under the First and Fourteenth Amendments by preventing new political parties from appearing on the ballot through the use of impermissible signature and party name requirements.

This Court's ballot access decisions are grounded in the protections afforded voters and candidates by the First and Fourteenth Amendments to the Constitution. Although the rights to freedom of association, speech and equal protection are more aptly ascribed to the individual electors, they are inextricably entwined with the rights of the candidates whom the voters desire to support. *Anderson v. Celebrezze,* 460 U.S. 780, 103 S.Ct. 1564, 1568, 75 L.Ed.2d 547 (1983).

Voters may only exercise their right to freedom of speech and association through a ballot which includes candidates who come near to reflecting the voter's "policy preferences on contemporary issues." *Lubin v. Panish,* 415 U.S. 709, 716, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974). The right to vote is "heavily burdened" if the voter's choices are confined to the major party players when new parties and others are "clamoring for a place on the ballot". *Id.*

In short, the exclusion of new party candidates burdens the voters' freedom of association rights because an election campaign is a platform for expression of viewpoints and because candidates serve as focal points for like-minded citizens. *Anderson,* 460 U.S. at 788, 103 S.Ct. at 1569.

In *Anderson,* this Court prescribed the method to be utilized in reviewing statutes regulating new party ballot access. The process is an analytical one, first considering the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments", and then identifying and evaluating the "precise interests put forward by the State as justification" for the rule. *Id.,* 460 U.S. at 789, 103 S.Ct. at 1570. Finally, the court must determine the legitimacy and strength of those state interests and consider the extent to which those interests make it necessary to burden the plaintiff's rights. *Id.* When state laws establish distinct burdens on new party ballot access, the State must demonstrate a compelling state interest for the challenged regulation. *Williams v. Rhodes,* 393 U.S. 23, 31, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968).

The decision below is plainly indefensible. First, the State's restriction on the use of a political party name prohibits the expansion of a new political party into new jurisdictions. Second, the "complete slate" requirement imposes signature quotas relating to numerosity and geography which bear no relation to any state interest. The Illinois Supreme Court decision and the record fail to identify **any** state interest allegedly furthered by the Illinois statutes, compelling or otherwise. Had it not been stayed, the decision would have completely thwarted the candidates' right to ballot access and the voters' rights to speak, assemble and choose.

II

THE ILLINOIS ELECTION CODE IMPERMISSIBLY PROHIBITS NEW POLITICAL PARTIES FROM EXPANDING FROM A CITY TO A COUNTY.

Article 10 of the Illinois Election Code sets forth the requirements for new political parties to gain ballot access. Article 10's labyrinthine array of obstacles to new party ballot access has been slowly eroded by a series of cases considered by this Court and the United States Court of Appeals for the Seventh Circuit. Together, these cases have outlined the basic principles of liberal ballot access found at the heart of the claims considered in this case. *See Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230 (1979) (invalidating a requirement that city candidates obtain more signatures than statewide candidates); *Kusper v. Pontikes,* 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973) (invalidating a primary lock-out rule); *Moore v. Ogilvie,* 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969) (invalidating a requirement that 25,000 signatures for statewide candidates must include at least 200 from each of 50 counties); *Communist Party v. State Board of Elections,* 518 F.2d 517 (7th Cir. 1975), *cert. denied,* 423 U.S. 986, 96 S.Ct. 394, 46 L.Ed.2d 303 (1975) (invalidating a requirement that statewide candidates must obtain no more than 13,000 of their 25,000 signatures from a single county).

In *Socialist Workers,* this Court invalidated just one of Illinois' many restrictions on new party formation and established that "[b]y limiting the choices available to voters, the State impairs the voters' ability to express their political preferences * * * [V]oting is of the most fundamental significance under our constitutional structure." 440 U.S. at 184, 99 S.Ct. at 990. This Court also reaffirmed that restrictions on new party formation are only permissible when they serve compelling state interests and are adopted through use of the least restrictive means to those ends. This Court recognized that new parties have played an important role in the political development of the nation, and that overbroad restrictions on those parties jeopardize this highly protected form of political expression. *Id.*

The county HWP candidates sought to organize under the banner of a political party which had already achieved substantial support in the City of Chicago[9], but which had not yet had the opportunity to run in Cook

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[9] The HWP first ran candidates in the April, 1989 special mayoral election. The results of the election were:

Richard M. Daley (D)	577,141	55.4%
Timothy C. Evans (HWP)	428,105	41.1%
Edward R. Vrdolyak (R)	33,998	3.5%

This level of support was, of course, sufficient to grant HWP equal status with the Democratic and Republican parties as to Chicago municipal elections. Mr. Evans testified before the Electoral Board that he authorized the county candidates to continue use of the party name. R. Vol. 8, Tr. 8/24/90 (11:00 am) at 4-17.

(Continued on following page)

County.[10] The supreme court majority removed the county HWP candidates because the use of the same name violated the statutory proscription against duplicating the names of "established" political parties.

Section 10-1 of the Election Code, however, clarifies that a local party is only "established" as to the community in which its candidates ran. Accordingly, the "same name" ban extends, by its terms, only to parties that are "established" in the same jurisdiction. Since the HWP was not established in Cook County, the use of the HWP name by the countywide candidates was entirely proper.

As an administrative agency, the Electoral Board had no authority to declare statutes unconstitutional. Even if the Board had that power, the Board need not have exercised it here, since the statutes in question could have been read in a constitutional and rational fashion. The Board's decision observed the fundamental canon of statutory construction that a statute must be construed in a broad fashion to save it from constitutional infirmities.

(Continued from previous page)

The HWP continues to enjoy a high degree of success in local Chicago elections. The results of the 1991 mayoral election were:

Richard M. Daley (D)	452,075	70.7%
R. Eugene Pincham (HWP)	160,504	25.1%
George Gottlieb (R)	23,477	3.7%
James Warren (SWP)	3,582	0.5%

[10] The first countywide election after Evans' mayoral bid was the November, 1990 election.

Morrison v. Olson, 487 U.S. 654, 682, 108 S.Ct. 2597, 101 L.Ed.2d 569, 600 (1988).

The Illinois Supreme Court's interpretation of this "same name" rule not only restricts the candidates' constitutional rights, but it is also completely unworkable. Under this construction, if a local party achieves support and becomes "established" in the City of Cairo, Illinois, the same party name may not be used by candidates seeking municipal office in Chicago, 400 miles away.[11] Similarly, candidates would be faced with the daunting task of investigating the status of their party name in each of Illinois' 1,000-plus incorporated municipalities. Such a requirement obstructs the ability of the new parties to form, let alone grow. Under the supreme court's rationale, anyone could successfully challenge a new party ticket simply by finding an established party somewhere in the state which bore or included the name of the challenged new party.

The Electoral Board interpreted this provision as merely prohibiting the use of party names which were "established" as to the subdivision in which the prospective candidates were running. Because the HWP was only established within the City of Chicago, the Board saw no bar to the use of the party name countywide. The dissenting supreme court justices endorsed this judgment and found that the candidates' rights could be preserved while also protecting Illinois' rights to control ballot confusion. Likewise, they noted that the majority's interpretation of § 10-5 led inexorably to a result directly at odds with the settled decisions of this Court. Pet. Cert. 8a, 14a.

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[11] In Illinois, candidates for municipal offices generally shun the labels of the nationally-established political parties by forming "local" parties such as the "Good Government Party". *See Arden v. Village of Oak Lawn*, 537 F. Supp. 181, 184, n. 8 (N.D. Ill. 1982). Candidates for legislative and county offices generally run as Democrats or Republicans.

The right to form and foster a new political party does not begin and end with ballot access; it includes the right to capitalize on past success by fielding candidates and promoting a platform in new areas. In examining a similar issue, this Court noted: "[T]o grant the State power to keep all parties off the ballot until they have enough members to win would stifle the growth of all new parties working to increase their strength from year to year." *Williams v. Rhodes*, 393 U.S. 23, 32, 89 S.Ct. 5, 11, 21 L.Ed.2d 1 (1968). Here, the interpretation of the Illinois "party name" rule forces a new party to tackle a statewide campaign first in order to run future candidates in smaller jurisdictions. Therefore, because the "same name" ban prohibits the expansion of a political party to a new jurisdiction, it is far too onerous to protect any legitimate state interest.

In sum, by preventing the expansion of the party standard to new jurisdictions, the Illinois court has thwarted any reasonable means through which Illinois new parties can achieve continuing electoral access. See Pet. Cert. 13a (Justice Miller's dissenting opinion).

III

THE "COMPLETE SLATE" REQUIREMENT IMPOSES SIGNATURE QUOTAS BASED ON NUMEROSITY AND GEOGRAPHY WHICH BEAR NO RELATION TO ANY STATE INTEREST.

The Illinois Supreme Court held that all HWP candidates could not appear on the ballot because the HWP failed to file a "complete slate" of candidates as required by section 10-2 of the Election Code. Pet. Cert. 4a. This restriction is constitutionally impermissible for three reasons. First, it effectively requires a new political party in Cook County to obtain 50,000 signatures to appear on the ballot, when a new statewide party need only present 25,000 signatures. Second, the "complete slate" requirement effectively forces a new political party in Cook County to obtain 25,000 signatures from Chicago and 25,000 from suburban Cook County. Third, it imposes a "complete slate" requirement on new political parties without imposing a similar requirement on established parties.

A. SECTION 10-2 IMPOSES IMPERMISSIBLE BURDENS BECAUSE IT REQUIRES NEW COUNTYWIDE PARTIES TO OBTAIN MORE SIGNATURES THAN NEW STATEWIDE PARTIES.

The HWP sought to nominate candidates for all available countywide offices, Cook County Commissioners elected from Chicago, Cook County Commissioners elected from the suburbs, and Commissioners of the

Metropolitan Water Reclamation District[12]. It is undisputed that the petitions for suburban commissioners contained less than the requisite 25,000 signatures, and therefore, the suburban Commissioner candidates were ineligible for a position on the ballot.[13]

The Board, however, found that the infirmity in suburban signatures did not doom the entire party ticket because it believed that such a strict interpretation of the "slate requirement" would be unconstitutional. Pet. Cert. 45a. The Board took a broad interpretation of the statute, essentially holding that the law only required that the petition list the "complete slate" which the party **desired to run,** not a "complete slate" **for all offices up for election.** Such an analysis of the new party statute is not extraordinary. See *Stevenson v. State Board of Elections*, 794 F.2d 1176, 1179 (7th Cir. 1986) (Easterbrook, J., concurring). The Circuit Court and the Illinois Supreme Court rejected the Board's position and held that the ineligibility of the suburban HWP candidates resulted in the failure to file a "complete slate". For that reason, the lower courts barred all HWP candidates from the ballot.

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[12] Although this component did not contain sufficient signatures to stand alone, the Board and Circuit Court found that the water district was not a "district" of Cook County as contemplated by § 10-2, and that this deficiency was not relevant to consideration of the remaining candidacies. Pet. Cert. 47a.

[13] The Board found that the HWP had filed approximately 44,000 signatures on the county/city petitions but only 7,400 on the county/suburban petitions. Pet. Cert. 46a. In the November, 1986 election for suburban commissioner, 635,285 ballots were cast. Thus, the 25,000 signature requirement for suburban commissioner is only 3.9% of the votes cast, a threshold permissible under this Court's standards as set forth in *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed. 2d 554 (1971) (upholding signature requirement equalling 5% of registered voters). The 7,400 suburban signatures submitted by HWP represent only 1.2% of the votes cast.

Section 10-2, as interpreted by the Illinois Supreme Court, therefore, requires a new countywide political party to collect 50,000 signatures – 25,000 for suburban commissioners, coupled with 25,000 for city commissioners. This requirement of 50,000 signatures is at odds with the *Socialist Workers* holding.

In *Socialist Workers,* this Court held that the Illinois Election Code was unconstitutional in that it required new political parties to collect more signatures to run for public office in the City of Chicago than the 25,000 signatures that would be required to run for statewide office. 440 U.S. at 187. Justice Rehnquist observed the inequity of the requirement and succinctly stated that "[t]he disparity between state and city signature requirements does not make sense * * * . [T]he disparate treatment bears no relationship to any state interest." *Id.* at 190-91 (Rehnquist, J., concurring).[14] Justice Stevens stated the legal principle even more bluntly: "If [the interests of limiting ballot access to serious candidates] is adequately served by a 25,000-signature requirement in a statewide election, the same interest cannot justify a larger requirement in a smaller election." *Id.* at 189. (Stevens, J., concurring). The HWP has been placed in the position of collecting more signatures to run as a countywide party than it would need as a statewide party.

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[14] The incongruencies were created as the courts invalidated various portions of the Election Code and left remaining similar provisions to stand. See *Socialist Workers,* 440 U.S. at 191 (Rehnquist, J., concurring) ("The courts having knocked out key panels in an otherwise symmetrical mosaic, it is not surprising that little sense can be made of what is left.").

B. SECTION 10-2 IMPOSES IMPERMISSIBLE BURDENS ON NEW POLITICAL PARTIES BECAUSE IT REQUIRES GEOGRAPHIC DISTRIBUTION OF PETITION SIGNERS.

The Board determined that the disqualification of the suburban commissioners did not require the disqualification of the entire HWP ticket. Nonetheless, the Illinois Supreme Court majority narrowly interpreted the Election Code to strike the HWP county and city candidates merely because their running-mates did not demonstrate the required suburban support.

This construction ignores this Court's mandate in *Moore v. Ogilvie* and *Illinois State Board of Elections v. Socialist Workers Party,* and imposes the will of the voters of a smaller jurisdiction over the will of those in the larger. In effect, the decision below gives suburban voters veto power over candidates running only in Chicago or countywide. Such geographic discrimination runs afoul of the principles established in *Moore v. Ogilvie,* 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969). In *Moore,* this Court held that Illinois' requirement that new parties present a total of 25,000 signatures distributed in groups of at least 200 from each of 50 counties violated the candidates' rights to due process and equal protection.

While signature requirements serve the important purpose of ensuring that the candidates seeking ballot status have "achieved a modicum of support" in the community, see *American Party of Texas v. White*, 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974), the numerical framework for this test must always comport with constitutional standards. Requiring separate suburban signatures for county candidates does nothing to further that interest. *See also Communist Party v. State Board of Elections*, 518 F.2d at 520.

C. THE "COMPLETE SLATE" REQUIREMENT IMPERMISSIBLY BURDENS NEW POLITICAL PARTIES BECAUSE NO SIMILAR REQUIREMENT IS IMPOSED ON ESTABLISHED PARTIES.

Under the Illinois Supreme Court's holding, Illinois candidates may generally not run alone under a new party label. Section 10-2 states that if more than one office is up for election in a jurisdiction, the party must file a "complete slate" of nominees for all offices serving that jurisdiction. Interestingly, established parties need not fill every available ballot position. For instance, in heavily Democratic areas such as Chicago, the Republican party's line on the ballot often simply states "NO CANDIDATE FILED".

Presumably, the slate requirement encourages party identification and cohesiveness. While this is a permissible goal, it hardly can be justified in the framework of a new party which has yet to form. Even if the "complete slate" requirement is justifiable in some context, there is clearly no rationale supporting the result reached by the court below. The means chosen by the supreme court majority are not the "least drastic means" of advancing whatever state interest might be furthered by the complete slate requirement. Rather, they are quite draconian methods which exact the most severe penalty of removal of the candidates from the ballot, thus limiting voter choice.[15] *Richards v. Lavelle*, 620 F.2d 144 (7th Cir. 1980).

For example, a new "anti-tax" party may wish to nominate candidates only for offices that have an impact on taxes or tax policies. Under the Illinois court's rationale, such a party may be forced to field candidates for offices that have no relation to its platform. Such a requirement particularly infringes on a party's ability to limit its agenda only to certain issues, and thus to disassociate itself from views it might not otherwise desire to espouse. *Cf. Wooley v. Maynard*, 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977).

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CONCLUSION

The dissenting Illinois Supreme Court justices correctly noted that the majority's decision was "not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights." Pet. Cert. 15a. The judgment of the Supreme Court of Illinois should be affirmed in part and reversed in part by fully reinstating the decision of the Cook County Officers Electoral Board.

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[15] The Board knows of no instance in decades where any person ran for countywide office in Cook County as an independent or as a candidate of a new political party.

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No. 90-1435

In The

Supreme Court of the United States

October Term, 1991

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COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,
Petitioners,
vs.

DOROTHY REED, *et al.*,
Respondents.

◆

On Writ Of Certiorari To The Supreme Court Of Illinois

◆

REPLY BRIEF FOR THE PETITIONERS

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No. 90-1435

In The

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DOROTHY REED, *et al.*,
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On Writ Of Certiorari To The
Supreme Court Of Illinois

REPLY BRIEF FOR THE PETITIONERS

INTRODUCTORY STATEMENT

This brief is submitted by the Cook County Officers Electoral Board and its members, David D. Orr, Jack O'Malley and Aurelia Pucinski (collectively the "Board"), as petitioners in No. 90-1435, in reply to the brief of Dorothy Reed, et al., as respondents in No. 90-1126. While the Reed brief is labeled as No. 90-1126, the issues raised are identical to those in No. 90-1435. Thus, the Board respectfully submits this reply to the Reed respondents' brief.

ARGUMENT

I. THE CONTROVERSY IS NOT MOOT

The respondents suggests that there is no longer a need for the Court to adjudicate petitioners' ballot access rights since the election has been held. Under Illinois law, however, the right of the Harold Washington Party to future ballot access hinges on the propriety of placing the HWP candidates on the November, 1990 ballot. Several HWP candidates received over 5% of the vote, entitling the entire party to hold a primary election and to an automatic party line on future Cook County general election ballots. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd Supp. 1991).

The decision of the Illinois Supreme Court and this Court's stay order of October 25, 1990 have cast great uncertainty on the manner by which new political party candidates in Illinois may obtain ballot access.[1] The controversies in this case will recur whenever new political party candidates run in Illinois, or four times every two years. The controversies will first repeat in December, 1991, when petitions for county offices are filed in Cook

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[1] The Illinois Supreme Court's unexplained decision, together with this Court's stay order, indeed has clouded the already-opaque statutory scheme to the extent that even the state agency which administers elections cannot tell candidates running in 1992 exactly what do to qualify for the ballot. The Illinois State Board of Elections' *1992 Candidate's Guide* has a new caveat in its section setting forth the requirements for new party candidates for county office. The *Guide* admonishes candidates to "[s]ee *Reed v. Norman*, writ of certiorari granted May, 1991, pending in the United States Supreme Court." Illinois State Board of Elections *1992 Candidate's Guide* at 29.

County.[2] While new party candidates for county offices are relatively rare in Illinois, new parties are customarily used by candidates for municipal office in Illinois. These municipal candidates have obediently followed the "complete slate" requirement, but would not have to follow such a restraint if this Court were to declare it void. Because these issues will recur, but evade review, this case presents a recognized exception to the mootness doctrine which this Court has often invoked in election cases. *Moore v. Ogilvie,* 394 U.S. 814, 816, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969).

II. THE DECISION BELOW INVOLVED SUBSTANTIAL FEDERAL QUESTIONS

Respondents argue that the judgment of the Illinois Supreme Court merely involved construction and application of a state statute, and thus rested on independent state grounds. However, that statutory interpretation and application are directly at odds with the federally-protected rights of the HWP candidates and their supporters. The HWP directly attacked the validity of these statutes on federal constitutional grounds in the courts below, and the Electoral Board's decision rested in large part on its desire to narrowly construe the statutes to avoid infringing on those federal rights. See Petition in No. 90-1435 at 40a, 48a.

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[2] Candidates running in the March, 1992 Harold Washington Party primary need only submit 956, rather than 25,000, signatures on their nominating petitions. Official Canvass of Results of the November, 1990 General Election, Cook County Canvassing Board; Ill.Ann.Stat. ch. 46, ¶ 7-10 (Smith-Hurd 1991 Supp.).

The first of two issues cited by respondents is the "party name" issue. Indeed, the statute in question helps prevent voter confusion, by ensuring that persons do not run under a label which is already used by a party which has become established *in the same jurisdiction*. However, the Illinois Supreme Court took that purpose a step too far, by preventing a group of persons from expanding the party from Chicago to Cook County under the same name, even though that group had permission to use the name, and the "two" parties would never be on the ballot at the same time.[3]

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[3] Candidates for county offices run only in even-numbered years; candidates for Chicago municipal offices run in the odd-numbered years. *Compare* Ill.Ann.Stat. ch. 46 ¶¶ 2A-10 – 2A-24 (county offices) and ¶¶ 2A-25 – A-26 (Chicago municipal offices) (Smith-Hurd 1991 Supp.).

Also, a party which becomes established in Cook County is not entitled to run candidates in Chicago municipal elections against candidates of Chicago-established parties. (See Resp. Bf. at 3. "each of which is entitled to run candidates in all ensuing municipal elections for Chicago city officials.") The party only becomes established in the political subdivision in which it ran: Cook County. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). Establishment of the party in Cook County does not also permit the party to run in municipal elections in municipalities in that county. At any rate, the City of Chicago is located in two different counties: Cook and DuPage.

Success in a countywide election entitling a party to established party status in that county does not, under Illinois law,

(Continued on following page)

Respondents argue that petitioners' requested relief would enable anyone to start their own "Republican" or "Democratic" party and run candidates under that name against the "legitimate" candidates of those parties. Respondents' supposition ignores that these parties are established statewide *and* in every jurisdiction and political division of the State.[4] Those two names, therefore, cannot be used by any new political party running anywhere in the State. The Harold Washington Party's established status in two jurisdictions prevents others from using the HWP name in those jurisdictions. The decision of the Illinois Supreme Court prohibits the HWP from expanding its base throughout the state so it, too, might achieve the status of the Republican or Democratic parties.

III. THE COUNTYWIDE AND CITY-ONLY CANDIDATES WERE IMPROPERLY REMOVED FROM THE BALLOT BECAUSE THEIR RUNNING-MATES FAILED TO FILE THE REQUISITE NUMBER OF SIGNATURES.

The Board agrees with the Reed respondents that the HWP candidates for Cook County Commissioners running outside Chicago (the "suburban candidates") were

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permit the party to run in *municipal* elections in that county. Thus, the "Timothy Evans-Chicago" Harold Washington Party and the "Eugene Pincham-Cook County" Harold Washington Party cannot be on the ballot at the same time.

[4] Both parties retained this special status by receiving over 5% of the vote at the November, 1990 election for statewide candidates. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.).

properly denied ballot access. The respondents, however, mischaracterize why the other HWP candidates were removed from the ballot. They were not removed because they did not have sufficient signatures. They were removed because the suburban candidates did not have enough signatures: in short, because of the "complete slate" requirement.

The U.S. District Court's decision in the companion case sheds little light on the issues at stake before this Court. *Black v. Cook County Officers Electoral Board*, 750 F.Supp. 901 (N.D. Ill. 1990). The *Black* court considered only the HWP's claim that Illinois' requirements that the HWP slate must include judicial candidates was impermissible. Interpreting the Illinois statutory scheme under the *Erie* doctrine, the District Court found that Illinois law did not, in fact, require judicial candidates to be part of the "complete slate". *Id*. 750 F.Supp. at 908. In doing so, the District Court declined to rely on the Circuit Court of Cook County's interpretation of the statute, which found that judicial candidates were a required part of the slate. Further, the *Black* court did not have the opportunity to decide whether the "complete slate" or "party name" requirements, as later interpreted by the Illinois Supreme Court, were themselves unconstitutional.

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CONCLUSION

The judgment of the Supreme Court of Illinois should be affirmed in part and reversed in part by fully reinstating the decision of the Cook County Officers Electoral Board.

Respectfully submitted,

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In The

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BARBARA J. NORMAN, et al.,

Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

◆

On Writ Of Certiorari To The Supreme Court of Illinois

◆

BRIEF FOR THE COMMITTEE FOR PARTY RENEWAL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

◆

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Consent to file this brief as amicus curiae in support of Petitioners has been obtained from counsel for Petitioner Cook County Officers Electoral Board (No. 90-1435), Petitioners Barbara J. Norman, et al., (No. 90-1126), and Respondents Dorothy Reed, et al., and are on file with the clerk.

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INTEREST OF THE AMICUS CURIAE

The Committee for Party Renewal is a bipartisan, voluntary association of over 200 political scientists, party leaders, and elected officials who believe that strong political parties are essential for effective popular control of government. The Committee is dedicated to strengthening parties – the only broad based, popular intermediaries between the people and their government – as representative and purposeful institutions. The Committee's members include the country's leading political scientists, among them James MacGregor Burns, Gerald Pomper, Everett Carll Ladd, Rep. William Thomas (R-CA), Rep. David Price (D-NC), William Crotty, John Jackson of Southern Illinois University, and John Bibby.

The Committee's Principles, published in 1977, hold that, "without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Parties are indispensable to the realization of democracy." In support of its mission, the Committee conducts educational efforts, has provided testimony to Congress, and has participated in court actions in support of strong parties and responsive government.

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I. SUMMARY OF ARGUMENT

The prevailing consensus that exists among political scientists about the importance of parties has been succinctly summarized: "No America without democracy, no democracy without politics, no politics without parties." Ladd, *Political Parties, "Reform," and American Democracy,* Challenges to Party Government (J. White, J. Mileur, eds. forthcoming, So. Ill. Univ. Press 1992). Effective third parties are a small but integral part of the American "two party" system. They raise issues, introduce ideas into political discourse, perform the vital function of educating voters to their points of view, link voters apathetic toward or alienated from the major parties to government, and provide a check on major party abuse of power. The legitimate purpose of ballot access laws is to prevent fraud and provide for orderly elections – not to limit the ability of representative third parties to place candidates before the electorate.

The challenged portions of the Illinois Election Code, Ill. Rev. Stat. ch. 46, para. 10-2 and 10-5 (1989), burden constitutional rights of party members and voters while advancing no state interest. Indeed, the Illinois code runs directly counter to state and societal interests in promoting a strong party system. These provisions of the Code constitute unwarranted interference in party affairs and an abuse of the state's authority to regulate elections, and have a detrimental effect on American political life.

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II. ARGUMENT

A. Electoral Participation of Third Parties is an Integral and Beneficial Part of the American Political System.

The most distinctive feature of American democracy is the two-party system, or, more properly put, a multi-party system dominated by two major parties. E. Schattschneider, Party Government 67-68 (1942). Despite this two party dominance, political scientists have long recognized the vital supporting role played by "third" parties. As V.O. Key, one of the foremost observers of American polity, observed nearly three decades ago, third parties are "integral elements" of the American system. V. Key, Politics, Parties and Pressure Groups 279 (5th ed. 1964).

The contributions of third parties are many. As the major parties tend to seek the safe middle ground to appeal to the broadest possible segment of the electorate, it has often been left to third parties to articulate new ideas and to demonstrate the existence of voting blocks that can be wooed by a major party willing to adopt an issue. Key, *supra* at 258-59. There is little doubt that the Liberty and Free-Soil Parties helped to force the issue of slavery onto the nation's agenda in the 1840's. F. Smallwood, The Other Candidates 25 (1983). Among the many well established policy innovations first advocated by third parties are woman's suffrage, farm aid, child labor laws, and federal old-age pensions. S. Rosenstone, R. Behr, E. Lazarus, Third Parties in America 8 (1984). This role as innovators and catalysts to change prompted one former President of the American Academy of Historians to declare that a vote for third parties was "probably the most powerful vote that has ever been cast." Hicks, *The Third Party Tradition in American Politics,* 20 Miss. Valley Hist. Rev. 3, 27 (1933).

In a similar vein, third parties propose and explain new ideas and policies to the public. Smallwood, *supra* at 26. Third party campaigns are often geared more to education than election. Their campaigns become a forum for a substantive debate of new ideas, far removed from the sound-bites and glossy media campaigns of the major parties. They thus serve an important public purpose even when their ideas are ultimately rejected.

Third parties add to the stability of the American two-party system by serving as outlets for constructive protest and by providing a vehicle for disenfranchised minorities to participate in the system. For example, studies have shown that supporters of George Wallace's 1968 American Independent Party generally felt alienated from society and ignored by the major political parties and their presidential nominees. Pettigrew, Riley & Vanneman, *George Wallace's Constituents,* 5 Psychology Today 47 (Feb. 1972). Similarly, supports of John Anderson's independent candidacy in 1980 were expressing displeasure with the two major party presidential candidates. G. Pomper, The Election of 1980 (1981). The Harold Washington Party, which would be stricken from the ballot if the challenged provisions of the Illinois code are upheld, brilliantly illustrates this paradigm. Black voters traditionally vote less than their white counterparts and feel less a part of American society. Many African-Americans still fear reprisal for exercising their right to vote. St. Angelo & Puryear, *Fear, Apathy, and Other Dimensions of Black Voting,* The New Black Politics (M. Preston, L.

Henderson, Jr., P. Puryear, eds. 1982) The Harold Washington Party, by appealing directly to voters who believe they have been shut out of the system, serves the classic third party function of linking alienated voters to government. *See* G. Sartori, Parties and Party Systems 25 (1976).

By campaigning on new and alternative themes and issues, and reaching out to alienated voters, third parties also combat voter apathy. Turnout in American presidential elections fell from 60.9% in 1968 to just 50.2% in 1988.[1] In 1988, 57% of respondents told the Gallup organization that they wished they had, "a different set of choices." J. White, the New Politics of Old Values 173 (1990). Third parties combat apathy by offering choice to voters unimpressed with major party candidates. D. Mazmanian, Third Parties in Presidential Elections 77-81 (1974). In 1990, third parties drew 2.8 million votes in the 23 gubernatorial races, and 480,000 votes in the 13 U.S. Senate races, in which they appeared on the ballot.[2]

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[1] Percentages of registered voters voting have been: 1968, 60.9%; 1972, 55.2%; 1976, 53.5%; 1980, 52.6%; 1984, 53.4%; and 1988, 50.2%. F. Sorauf, H. Beck, Party Politics in America 209-210 (1988); P. Abramson, J. Aldrich, D. Rohde, Change and Continuity in the 1988 Elections (1990).

[2] *See* Alaska Official Returns (1990); Arizona Official Canvass (1990); California Statement of Votes (1990); Connecticut Statement of Vote (1990); Delaware Official Results of General Election (1990); Georgia Tabulation by Counties (1990); Hawaii Results of Votes Cast (1990); Illinois Official Vote (1990); Iowa Official Canvass Summary (1990); Kansas Election Statistics (1990); Maine General Election Tabulation (1990); Massachusetts Returns of Votes (1990); Michigan General Election Returns (1990); Minnesota Election Results (1990);

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In the 1990 elections, 77 of 435 U.S. House seats – 18% of the total – went uncontested by one of the major parties. Clerk of the U.S. House of Representatives, Statistics of the Congressional Election of November 6, 1990 (1991). There was no major party contest in 34.3% (2099 of 6114) of the races for state legislatures.[3] In these situations third parties provide choice and some level of

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Montana Report of Official Canvass (1990); Nevada Official Abstract of Votes Cast (1990); New Hampshire Manual for General Court (1991); New Jersey Results of General Election (1990); New York Official Election Returns (1990); Oklahoma Election Results and Statistics (1990); Oregon Official Abstract of Votes (1990); South Carolina General Election Returns (1990); South Dakota Official Election Returns (1990); Tennessee General Election (1990); Texas General Election Returns (1990); Vermont Official Report of the Canvassing Committee (1990); Virginia Official Election Returns (1990).

[3] *See* Alabama certified vote totals (1990) (unpublished); Alaska Official Returns (1990); Arizona Official Canvass (1990); Arkansas General Election Returns (1990); California Statement of Votes (1990); Colorado Abstract of Votes Cast (1990); Connecticut Statement of Vote (1990); Delaware Official Results of General Election (1990); Florida Official General Election Returns (1990); Georgia Tabulation by Counties (1990); Hawaii, Results of Votes Cast (1990); Idaho Abstract of Votes (1990); Illinois Official Vote (1990); Indiana Election Report (1990); Iowa Official Canvass Summary (1990); Kansas Election Statistics (1990); Kentucky Official Election Returns (1990); Report of the Secretary of State of Louisiana (1990); Maine General Election Tabulation (1990); Maryland General Election Returns (1990); Massachusetts Returns of Votes (1990); Michigan General Election Returns (1990); Minnesota Election Results (1990); Mississippi Certified Returns (1990); Missouri Certified Totals of the General Election (1990); Montana Report of Official

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competition where the major parties choose not to. Indeed, in Chicago, it is the Harold Washington Party that provides the most effective opposition in an area where the Republican Party has long been ineffective at wooing voters.[4]

Finally, third parties serve as a constant check on the major parties. Their existence, as competition waiting in the wings, forces the major parties to be responsive to change. The most successful third party movements are a response to major party failure. Rosenstone, *supra* at 215-16. Major party performance is most satisfactory when the threat of third parties exists. Smallwood, *supra* at 27; Mazmanian, *supra* at 150.

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Canvass (1990); Nevada Official Abstract of Votes Cast (1990); New Hampshire Manual for General Court (1991); New Jersey Results of General Election (1990); New Mexico Official Returns (1990); New York Official Election Returns (1990); North Carolina Abstract of Votes Cast (1990); North Dakota Official Abstract of Votes Cast (1990); Ohio Report of Votes (1990); Oklahoma Election Results and Statistics (1990); Oregon Official Abstract of Votes (1990); Pennsylvania General Election Official Returns (1990); Rhode Island Tabulation of Votes Cast (1990); South Carolina General Election Returns (1990); South Dakota Official Election Returns (1990); Tennessee General Election (1990); Texas General Election Returns (1990); Utah Official Returns (1990); Vermont Official Report of the Canvassing Committee (1990); Virginia Official Election Returns (1990); Washington Official Returns of the General Election (1990); West Virginia Official Returns of General Election (1990); Wisconsin Results of General Election (1990); Wyoming Official Directory (1991). Nebraska holds nonpartisan elections.

[4] The Harold Washington Party's 1989 mayoral candidate, Timothy Evans, finished second with 41% of the vote; its 1991 mayoral candidate, R.E. Pincham, finished second with 25% of the vote, to the third place Republican's 3.7%.

Third parties have played a greater role in American politics than most casual observers realize. Prior to 1920, the composition of the U.S. House of Representatives typically included up to a dozen or more third party members. Third parties elected governors, gained majority control of city administrations and, in some cases, won majorities in state legislatures, all without upsetting the basic stability of the two-party system. *See* Smith, *Judicial Protection of Ballot-Access Rights,* 28 Harv. J. on Legis. 167, 169-171 (1991).

In fact, despite their occasional successes, third parties pose no threat to two party stability. Even if a third party were to replace one of the major parties, as the Republicans replaced the Whigs between 1854 and 1856, the system would remain one of two party domination. "We could not discard the two-party system and adopt a multiparty system in the United States . . . even if we wanted to do so." Schattschneider, *supra* at 67.

The reason for this is the U.S. system of single-member, winner take all districts. This system is used in all federal elections, including the electoral college, by all states, and for most local offices. Because a party receives no representation unless it can carry the electoral district with a plurality, the system puts severe pressure on parties hoping to gain over time. Voters will gravitate toward the most like-minded candidate perceived as having a chance to win. Facing a complete exclusion from office, parties are pressured to coalesce with like-minded parties until just two major parties remain. Typically, third party electoral successes are followed closely by changes in the major party platforms aimed at either absorbing the third party outright, or at least convincing its voters that the major party is a palatable enough alternative that it will not pay to vote for the third party, which is unlikely to gain power. Schattschneider, *supra* at 69-74. Only by concentrating strength in particular geographic regions have third parties been able to prosper in countries with single member districts, and even then they normally operate as one of just two dominant parties in their region, typically coalescing with one of the major parties when national issues are at stake. D. Rae, Political Consequences of Electoral Laws 92-95 (1971).

Given this, the proper role of ballot access laws is merely to provide an orderly method of conducting elections. Ballot access laws are a particularly clumsy and unnecessary mechanism for maintaining political stability, *Storer v. Brown*, 415 U.S. 724, 736 (1974); preventing factionalism, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 223 (1986); assuring majority winners, *Williams v. Rhodes*, 393 U.S. 23, 32 (1968); or fulfilling any state interest other than avoiding voter confusion and assuring fair and honest elections.[5]

When ballot laws are used to keep bona fide third parties off the ballot, they rob the American political system of a small but important part of its machinery for maintaining a stable, responsive democratic system.

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[5] In fact, after preventing fraud, the secondary objective of early supporters of the government printed "Australian" ballot was to make it *easier* for third parties to contest elections. *See* J. Wigmore, Australian Ballot System 25-26 (1889). Sixteen states originally adopted the Australian ballot with no access requirement at all save notice to the state. *See* A. Ludington, American Ballot Laws: 1888-1910 (1911).

B. The Challenged Provisions of the Illinois Election Code Are Overly Restrictive and Serve No Legitimate State Interest

Petitioners have contested the constitutionality of Section 10-2 of the Illinois Election Code, Ill. Rev. Stat. ch. 46, para. 10-2 (1989), as it requires 50,000 petition signatures for a new party to qualify for the ballot in a portion of the state, but only 25,000 signatures to qualify statewide. Amicus curiae is of the opinion that this provision is facially invalid under this Court's holding in *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), but leaves discussion of the issue to the parties. Of great immediate interest to amicus curiae, because the issues have not previously come before this court, is whether the state has a compelling interest in either restricting the use of a party's name as it expands into new portions of the state, Ill. Rev. Stat. ch. 46, para. 10-5 (1989), or in requiring a party to nominate a full slate of candidates in the state or district within which a new party seeks to operate, Ill. Rev. Stat. ch. 46, para. 10-2 (1989).

This Court has long recognized that state ballot access laws:

> place burdens on two different, although overlapping kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.

Williams v. Rhodes, 393 U.S. 23, 30 (1968).

As a result, states are required to justify their ballot access laws by identifying a compelling state interest served by those laws.[6] Among those interests previously recognized by this Court are avoiding voter confusion, promoting political stability, avoiding factionalism, avoiding clogged election machinery, blocking frivolous candidacies, and generally assuring fair and honest elections.[7] Sections 10-2 and 10-5 of the Illinois Election code are extraordinarily ill-suited to advance any of these state interests.

Amicus Curiae notes, at the outset, that no other state has adopted the "complete slate" requirement of Section

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[6] Past decisions of this Court have left some doubt as to the standard of review to be applied. In *Williams*, 393 U.S. 23, and *Illinois State Bd. of Elections*, 440 U.S. 173, the Court utilized a strict scrutiny standard of review. However, in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), the Court appeared to use an open-ended balancing test. Given the extent to which the system of single member districts assures a "two-party" system, there is serious doubt whether any ballot access law requiring more than a minimal showing of popular support can qualify as the least drastic means to meet state interests. However, under either standard, the requirements of Sections 10-2 and 10-5 of the Illinois Election Code burden fundamental rights to an extent not justified by state interests.

[7] *See Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Bullock v. Carter*, 405 U.S. 134 (1972); *Storer v. Brown*, 415 U.S. at 736; *American Party v. White*, 415 U.S. 767, 782 n.14, *reh'g denied* 417 U.S. 926 (1974). However, the Court has made clear that political stability is not an adequate interest where it is a mere excuse to protect existing parties from competition. *Anderson v. Celebrezze*, 460 U.S. at 801.

10-2.[8] While not dispositive of the state's interest, this fact alone casts serious doubt on whether the state's interest is sufficient to justify the burdens placed on fundamental rights. A closer examination shows that the full slate requirement, in fact, runs directly counter to state interests and is an unwarranted intrusion into party affairs.

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[8] *See* Ala. Code § 17-8-2.1 (1988); Alaska Stat. § 15.25.140, *et seq*. (1988); Ariz. Rev. Stat. Ann. § 16-341 (1984 & Supp. 1990); Ark. Stat. Ann. § 7-1-101, *et seq*. (1991); Cal. Elec. Code § 6430 (West 1977); Colo. Rev. Stat. § 1-4-801 (Supp. 1990); Conn. Gen. Stat. Ann. § 9-453a, *et seq*. (West 1989); Del. Code Ann. tit. 15 § 3001, *et seq*. (1981 & Supp. 1990); D.C. Code Ann. § 1-1312 (Supp. 1990), Fla. Stat. Ann. § 99.095, *et seq*. (West 1982 & Supp. 1991); Ga. Code Ann. § 21-2-130, *et seq*. (1987 & Supp. 1990); Haw. Rev. Stat. § 11-62, *et seq*. (1985 & Supp. 1990); Idaho Code § 34-501 (Supp. 1990); Ind. Code Ann. § 3-8-6-1, *et seq*. (Burns 1988 & Supp. 1990); Iowa Code § 45.1, *et seq*. (Supp. 1991); Kan. Stat. Ann. § 25-301, *et seq*. (1986 & Supp. 1990); Ky. Rev. Stat. Ann. § 118.305, *et seq*. (Michie/Bobbs-Merrill Supp. 1990); La. Rev. Stat. Ann. 18 § 461, *et seq*. (West 1979 & Supp. 1991); Me. Rev. Stat. Ann. tit. 21-A § 301, *et seq*. (Supp. 1990); Md. Elec. Code Ann. art. 33 & 4B, *et seq*. (Supp. 1989); Mass. Gen. Laws Ann. ch. 53 § 6, *et seq*. (1990 & Supp. 1991); Mich. Comp. Laws § 168.685 (Supp. 1991); Minn. Stat. § 204B.07, *et seq*. (Supp. 1990); Miss. Code Ann. § 23-15-1051, *et seq*. (1990); Mo. Ann. Stat. § 115.315 (Vernon Supp. 1991); Mont. Code Ann. § 13-10-601 (1989); Neb. Rev. Stat. § 32-526, *et seq*. (1989); Nev. Rev. Stat. § 293.171, *et seq*. (1990); N. H. Rev. Stat. Ann. § 655:40, *et seq*. (1986); N.J. Rev. Stat. § 19:13-3, *et seq*. (1989); N.M. Stat. Ann. § 1-7-1, *et seq*. (1985 & Supp. 1990); N.Y. Elec. Law § 6-100, *et seq*. (McKinney 1978 & Supp. 1991); N.C. Gen. Stat. § 163-96 (1987); N.D. Cent. Code § 16.1-11-30 (Supp. 1989); Ohio Rev. Code Ann. § 3517.01, *et seq*. (Anderson 1988 & Supp. 1990); Okla. Stat. Ann. tit. 26 § 1-108 (West 1991); Or. Rev. Stat. § 249.732 (Supp. 1990); Pa. Stat. Ann. tit. 25 § 2911, *et seq*. (Purdon 1963 & Supp. 1991); R.I. Gen. Laws § 17-14-7 (Supp.

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The full slate requirement, by requiring parties to nominate candidates for offices they do not wish to contest, clogs electoral machinery by adding to the number of candidates. It virtually mandates "line-holding" candidacies by frivolous candidates whose only purpose is to assure that their party's more serious candidates qualify for the ballot. Such frivolous candidates are likely to confuse voters far more than the presence of a third party on the ballot.

The full slate requirement does nothing to establish whether those candidates that *are* nominated by a new party have demonstrated the minimum level of support needed to be placed on the ballot.

In *Lubin v. Panish,* 415 U.S. 709 (1974), the Court struck down relatively innocuous filing fees,[9] noting that they bore little relationship to the seriousness of a candidacy or to a candidate's level of popular support. The full slate requirement bears even less relationship to a candidate's seriousness. If full slate laws had been widely adopted, every significant third party candidate for the

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1989); S.C. Code Ann. § 7-9-10 (Law. Co-op. Supp. 1990); S.D. Codified Laws Ann. § 12-5-1, *et seq*. (1982 & Supp. 1991); Tenn. Code Ann. § 2-13-201 (1985); Tex. Elec. Code Ann. § 181.005, *et seq*. (Vernon 1986 & Supp. 1991); Utah Code Ann. § 20-3-2.5 (Supp. 1991); Vt. Stat. Ann. tit. 17, § 2301, *et seq*. (1982 & Supp. 1990); Va. Code Ann. § 24.1-168 (Supp. 1990); Wash. Rev. Code § 29.24.010, *et seq*. (1965 & Supp. 1991); W.Va. Code § 3-5-22, *et seq*. (1990); Wis. Stat. § 8.01, *et seq*. (1986 & Supp. 1990); Wyo. Stat. § 22-4-201 (Supp. 1990).

[9] The filing fee in question in *Lubin* was just $706.60. 415 U.S. at 711.

Presidency in this century – including Theodore Roosevelt, Robert LaFollette, George Wallace, and John Anderson – would have been excluded from virtually every state ballot. Likewise, smaller third parties which, because of their modest vote totals, are required to regularly file petitions to appear on the ballot, often fail to nominate full slates of candidates. Even when they could meet the requirement, these smaller parties frequently choose not to contest every race so that they can focus their limited resources on those races deemed most important to them, including those where they perceive the best chance of winning.

There is no state interest in forcing third parties to nominate full slates of candidates. Established parties in Illinois are free to pick and choose the races they will contest, with no apparent detriment to the state. In 1986 the Democratic Party of Illinois had no candidate for Governor on the ballot. In 1990, 50 of 118 races for the Illinois House and seven of 20 races for the Illinois Senate had no major party contest.[10]

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[10] Illinois Official Vote (1990). In 1990, either or both of the major parties did not nominate a full slate of candidates for statewide office in thirteen states. See Alabama, certified vote totals (1990) (unpublished); Arizona Official Canvass (1990); Arkansas General Election Returns (1990); Georgia Tabulation by Counties (1990); Idaho Abstract of Votes (1990); Mississippi Certified Returns (1990); Nevada Official Abstract of Votes Cast (1990); New Mexico Official Returns (1990); Oregon Official Abstract of Votes (1990); South Carolina General Election Returns (1990); Texas General Election Returns (1990); Virginia Official Election Returns (1990); West Virginia Official Returns of General Election (1990).

Whether or not a party should nominate candidates for a few offices, or all of them, is a *strategic* decision traditionally made by the parties free of government interference – be they "minor" or "major" parties. Parties decide how much of their precious resources, including both money and manpower, they wish to devote to their candidates' campagins. Frequently, parties make decisions *not* to contest offices, finding no suitable candidates, or believing that such a contest would be a waste of time.

Indeed, the right not to nominate would seem to be an inseparable part of the fundamental right to associate for political ends. This Court has appropriately recognized that the state has no compelling interest in determining political party strategies, telling a party how to choose its nominees, or protecting parties from their own potentially foolish decisions. *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214 (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986). Parties are in the best position to know their own interests.

Likewise, Section 10-5 of the Illinois Election Code, which restricts the ability of the Harold Washington Party to expand into new portions of the state under its own name, serves no rational state interest. Admittedly the state has no interest in avoiding the voter confusion likely to result if various distinct parties operated under the same, or even substantially similar names around the state. However, in this case, it is undisputed that the candidates seeking to use the Harold Washington Party name in suburban Cook County have permission and are members of the same party already established in the city of Chicago. *See Reed v. Norman*, No. 70833 slip op. (Ill.

Oct. 12, 1990) (Miller, J., dissenting). The decision below amounts to the rather Kafkaesque suggestion that a party should be kept off the ballot because voters will be confused if the party campaigns under its own name.

From a standpoint of linking voters to government through identification with political parties, and providing for political vision through articulated party platforms, it is hard to imagine a more destructive law, or one better designed to confuse voters, than one which requires a party to operate under different names in different political subdivisions. Far from serving a valid state interest, Section 10-5 of the Illinois Election Code, as interpreted by the Illinois Supreme Court, promotes voter confusion and is contrary to the best interests of political parties and the American political system.

In many ways, the Harold Washington Party represents the classic model of third party activity in America. In an area long noted for an absence of two party competition, the Party has provided such competition. It has done so by bringing into the political system voters who have long felt ignored by that system and perhaps even afraid to participate in that system. There can be little doubt of the Harold Washington Party's substantial popular support or legitimacy. Unlike many third parties, it not only seeks to educate, but realistically seeks to govern. Illinois can have no legitimate interest in keeping this party off its ballot.

The demands of democracy make it essential that third parties be permitted to run. However, because state legislators are not only overwhelmingly members of the two major parties, but human, there will always be some tendency to overly discount the rights of third party members, to ignore the benefits of third party activity, and to use ballot access laws not only to prevent fraud and conduct orderly elections, but to eliminate political competition. R. Huckshorn, Political Parties in America 53 (1984). It is incumbent on this court to examine carefully the proferred interests of the states in their ballot access laws, and where those laws needlessly infringe on the fundamental First and Fourteenth Amendment rights of third party activists, members, and voters, to strike those statutes down.

◆

III. CONCLUSION

Section 10-2 and 10-5 of the Illinois Election Code burden the fundamental rights of voters and cannot be justified in terms of legitimate state interest. The decision of the Illinois Supreme Court should be reversed by this Court.

Respectfully submitted,

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Nos. 90-1126, 90-1435 Consolidated

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

BARBARA J. NORMAN, *et al.*,
Petitioners,
vs.
DOROTHY REED, *et al.*,
Respondents.

COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,
Petitioners,
vs.
DOROTHY REED, *et al.*,
Respondents.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICI

The American Civil Liberties Union (ACLU) is a national organization with nearly 300,000 members. The American Civil Liberties Union of Illinois (ACLU of Illinois) is the Illinois affiliate of the ACLU. The ACLU and its affiliates have been traditionally devoted to the protection and enhancement of fundamental liberties and basic civil rights.

Within a representative democracy, no right is more fundamental than the "equal right to vote." *Evans v. Cornman*, 398 U.S. 419, 426 (1970). Accordingly, this Court has repeatedly recognized the importance of rights of electoral participation and political association.

The instant controversy, involving the constitutionality of Illinois' procedures for creation and expansion of local political parties, deeply implicates these important political and associational interests. Indeed, it is the position of *amici* that Illinois' procedures impermissibly abridge these fundamental rights of political expression and association. *Amici* respectfully submit this brief to advance their position to this Court.

STATEMENT OF FACTS

Officials of Cook County, Illinois are elected from three constituencies. Some, including the President of the County Board, the State's Attorney, the Sheriff, and the County Clerk are elected from the county as a whole. Members of the County Board have been elected from two districts, one constituting the portion of the county within the City of Chicago ("City District") and one constituting the portion of the county outside that city ("Suburban District").[1] Ill.

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[1] The City of Chicago is not entirely contained within Cook County. The territory of the City includes O'Hare International Airport, and a portion of the Airport lies in DuPage County.

Const., Transition Schedule§ 5(b). The two districts have disparate populations,[2] so that in 1990 the more populous City District elected ten members at large and the Suburban District elected seven members at large.[3] *See Sutton v. Dunne*, 681 F.2d 484 (7th Cir. 1982) *cert. denied*, 460 U.S. 1081 (1983) (reapportioning Board members).

Illinois law provides two ways in which political parties may place before the electorate candidates for these offices. If one or more of a party's candidates for statewide office at the last general election for such offices polled more than 5% of the entire vote cast for that office, the party is an "'established political party' as to the state *and* as to any district or political subdivision thereof." Election Code, § 10-2, Ill. Rev. Stat. Ch. 46, § 10-2 (1989) (emphasis added).[4] A political party which is not established statewide may still be established in a particular subdivision, such as Cook County, if one or more of its candidates in that subdivision at the most recent election received more than 5% of the total votes cast for the offices sought.

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[2] At the 1980 Census, the population of the City of Chicago was 3,005,072 and the population of Cook County was 5,253,628. State & Metropolitan Area Data Book, 82, 400 (U.S. Government Printing Office 1986). Thus, the population of suburban Cook County was roughly 2,250,000. In 1986, the last election for the County Board prior to 1990, there were 1,476,370 votes cast, 841,085 in the City District and 635,285 in the Suburban District. Brief of Respondents Dorothy Reed, Valerie A. Sutton, Patton L. Fletcher, Ervin S. Ricks, and David Barrera in Opposition ("Br. In Opp.") 7. (The Petition for Writ of Certiorari in No. 90-1126 will be referred to as "HWP Pet." and that in No. 90-1435 will be referred to as "Board Pet.")

[3] At the November 1990 election, voters approved a binding referendum providing for election of all members of the County Board from 17 single-member districts. The first election of that sort will be in 1994.

[4] The Election Code is contained entirely within Chapter 46 of the Illinois Revised Statutes, and the section numbers therein are identical to the Code's own section numbers. Accordingly, no further parallel cites to the Illinois Revised Statutes will be given.

Id. Established political parties nominate candidates in primary elections and the names and party designations of those nominees then appear on the general election ballot. *Id.* § 7-1 *et. seq.* Parties which are not established are designated minor parties and must nominate candidates by petition. *Id.* § § 10-1 *et seq.*

In 1990, there were three parties established statewide: the Democratic Party, the Republican Party, and the Solidarity Party.[5] No other political parties were established in Cook County. In addition to the three statewide parties, the Harold Washington Party ("HWP") was established in the City of Chicago. (HWP Pet. 6.) However, the status of the HWP in Chicago did not entitle it to nominate candidates for Cook County offices, even those elected from the City District.

A minor party seeking to nominate candidates by petition must set forth "a complete list of candidates of such party for all offices to be filled in the . . . . political subdivision at the next ensuing election." Election Code § 10-2. As interpreted by the Illinois Supreme Court in this case, this provision requires a party seeking to present *any* candidates to the voters of Cook County to nominate candidates for *all* of the countywide positions and *all* positions on the County

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[5] The Solidarity Party was formed in 1986 when Adlai Stevenson III was nominated for Governor by the Democratic Party and found the candidates nominated for Lieutenant Governor and Secretary of State unacceptable running mates. By the time of the primary election, it was no longer possible to qualify for the ballot as an independent candidate, so formation of a new political party was necessary to run without associating with the unacceptable candidates. *See Stevenson v. State Board of Elections*, 638 F. Supp. 547 (N.D. Ill. 1986), *aff'd* 794 F.2d 1176 (7th Cir. 1986). A subsequent effort to merge the Solidarity Party into the Democratic Party was vetoed by Governor James Thompson, the candidate who defeated Stevenson. *Solidarity Party Gets A Reprieve: Thompson's Veto Action Will Let It Die A Natural Death*, Chicago Tribune, Sept. 25, 1987, at 24. Thus, although now abandoned by its founders, the Solidarity Party has continued to hold primary elections and will continue to do so as long as the occasional nominees receive the necessary votes. There is a dispute as to whether the votes received at the 1990 election were sufficient to allow that party to remain established. The Attorney General of Illinois has opined that it did not receive sufficient votes.

Board, both from the City District and from the Suburban District. (Board Pet. App. 4a.)

Because Cook County is "a political subdivision in which officers are to be elected from districts and at-large," the nominating petition is required "to consist of separate components for each district from which an officer is to be elected." *Id.* Thus, a petition to nominate minor party candidates in Cook County was required to contain three components: one for the county at large, one for the City District, and one for the Suburban District.[6]

Formation of a new political party for the entire state requires signatures of "1% of the number of voters who voted at the next preceding statewide general election or 25,000 qualified voters, whichever is less." *Id.* To form a new party in a political subdivision of the State, a nominating petition must be

> signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election . . . However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for Statewide new political party petitions at the next preceding Statewide general election, such Statewide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.

Id.

Based on the votes cast in the 1986 election, 5% of the votes cast would have been 73,818 for Cook County as a whole; 42,054 for the City District; and 31,764 for the Suburban District. However, because the statewide minimum was limited to 25,000, that number would also suffice for each component of the petition. But the two districts are mutually exclusive, so the requirement of 25,000 signatures on each component means that the entire petition must contain at least 50,000 signatures, double the number required for a statewide petition.[7]

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[6] In 1994, 18 components will be required, one at-large and one in each of the 17 County Board Districts.

Nominating petitions for minor party candidates are required to specify the name of the party represented by the candidates. "However, such party shall not bear the same name as, nor include the name of any established political party." Election Code § 10-5.2. There is no provision whereby a party established in one political subdivision, such as the City of Chicago, may nominate candidates under its own name or authorize an affiliated group to nominate candidates under that name in another political subdivision, such as Cook County.

At issue in this case is a duly filed petition seeking to nominate petitioners Barbara Norman, *et al.* ("HWP Candidates") as candidates of the HWP for the various offices of Cook County to be elected at the November, 1990 election. Those petitions bore roughly 44,000 signatures from the City District and roughly 7,800 from the County District. (Board Pet. App. 46a). The HWP was formed by those unhappy with what they felt was inadequate responsiveness of the Chicago and Cook County Democratic Party to the concerns of the African-American community. (HWP Pet. 6.)

Objections to the petitions were filed by Respondents Dorothy Reed, Valerie A. Sutton, Patton L. Fletcher, Ervin S. Ricks, and David Barrera ("Objectors"). (J.A. 6.) So far as pertinent here, Objectors challenged (1) the failure of the petition to contain sufficient signatures on its Suburban District component and (2) use of the HWP name. (J.A. 6.)

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[7] In 1994, with the establishment of single-member County Board Districts, the total required would be 5% of the total vote in the 1990 election. Had that system been in effect in 1990, it would have required a total of 73,818 signatures, almost triple the requirement for a statewide petition.

The sole evidence on use of the HWP name indicated that the nominations were made on behalf of an affiliate of the established HWP and with the consent of Tim Evans, the sole candidate of the established HWP and the person authorized by State law to appoint party committees pending their election in the 1992 primary. (Board Pet. App. 40a.)

The Cook County Officers Electoral Board ruled that the HWP candidates were entitled to use the HWP name. (Board Pet. App. 41a.) Because the Suburban District component had insufficient signatures, it ruled that the Suburban District Candidates could not appear on the ballot. (Board Pet. App. 48a.) But because the at-large component and the City District component did have sufficient signatures, it ruled that the other HWP candidates could appear on the ballot for the at-large and City District offices. (Board Pet. App. 47a-48a.)

The Objectors appealed, and the Circuit Court of Cook County ruled that none of the HWP candidates could appear on the ballot. (Board Pet. App. 22a-24a.) It ruled that the lack of sufficient signatures on the Suburban District component was fatal to the remaining components of the petition. (Board Pet. App. 23a-24a.) That order was stayed by the Illinois Appellate Court, thus leaving the Electoral Board order in effect. (J.A. 116.)

The Illinois Supreme Court, granted direct review and, on a 4-3 vote, affirmed. (Board Pet. App. 2a-5a.) The majority ruled that use of the HWP name violated § 10.5 of the Election Code and that failure to file sufficient signatures on the Suburban District component was fatal to the entire petition. (Board Pet. App. 4a.) The stay previously entered was vacated. (Board Pet. App. 4a.)

This Court stayed the Illinois Supreme Court's order, thus leaving the Electoral Board order in effect. (J.A. 118.) The HWP candidates appeared on the ballot, and one of them received 15.4% of the votes cast for the office she sought. Official Canvas of the Votes

Cast at the November 6, 1990 General Election (Cook County Clerk 1990). Thus, if the HWP was entitled to appear on the ballot, it has become an established political party in Cook County, entitled to nominate candidates at the next election.

INTRODUCTION AND SUMMARY OF ARGUMENT

Representative democracy rests upon the "consent of the governed" and this "consent" is, in turn, obtained by permitting the people to freely and fairly choose their political leaders. Alexander Hamilton observed that the essence of representative government is "that the people should choose whom they please to govern them." 2 *Elliot's Debates* 257.

This unexceptional proposition was also explored by Chief Justice Warren who noted that representative democracy "is undermined as much by limiting whom the people can select as by limiting the franchise itself." *Powell v. McCormack*, 395 U.S. 486, 547 (1969). Accordingly, our contemporary claim of commitment to democratic government has a hollow ring when we design laws that fail to confer upon our citizens the widest possible freedom to choose among the candidates seeking public office.

"[A] voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." *Lubin v. Panish*, 415 U.S. 709, 716 (1974). "This does not mean every voter can be assured that a candidate to his liking will be on the ballot," but a state may not discriminatorily obstruct the ability of like-minded citizens to put their candidates before the electorate. *Id.*

If minor parties are unduly limited in their access to the ballot, the voters are left without adequate alternatives to what they may find to be unsatisfactory offerings of the major parties. But the significance of ballot access is not measured solely by the ability of minor party nominees to be elected, for that would ignore

> the significant role that third parties have played in the political development of the Nation. Abolitionists,

> Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office. Overbroad restrictions on ballot access jeopardize this form of political expression.

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 185-86 (1979) (citations omitted); *Anderson v. Celebrezze*, 460 U.S. 780, 787-88, 794 (1983).

Minor parties also serve, as the HWP may do, as an alternative means of political expression for constituencies dissatisfied with a party to which they have previously adhered. If a constituency is large enough or the new party forms coalitions with other voters, the new party may itself become a major force. The renewed need of the old party to compete for once-reliable adherents also may alter the positions of that party, thus improving the lot of the formerly dissatisfied group. The new party may instead alert another major party to an electoral opportunity, thereby facilitating a transfer of allegiance in return for greater attention to the constituency which the new party sought to represent. For all of these reasons, the ability to associate by forming or expanding new parties is of fundamental importance to all citizens and is a significant factor in the democratic dynamic which keeps government and the political system accountable to the electorate.

A state may not broadly stifle this process by unduly burdening or restricting the formation of new political parties. Even less may it skew the process by granting some voters greater weight than others or by making it easier for some groups to form new parties than for other groups which are similarly situated with respect to the electoral process. Illinois has done both of these forbidden things. It has given greater weight to suburban voters by requiring equal numbers of signatures from the City District and the Suburban District, even though the latter is significantly less populous. Illinois has also preferred groups with substantial followings in both districts over more geographically concentrated and insular groups, such as the Cook County African-American community, which is predominantly located in the City District.

The second of these impermissible effects stems from the combination of two rules that, were each taken alone, might well be unobjectionable. One is the requirement that a new party show a modicum of support in *each district* where it nominates candidates rather than accepting such a showing for the *entire subdivision* of which the districts are a part. The other is the requirement that a new party nominate candidates for *all* positions in *all* districts. If Illinois accepted an overall showing of support for the entire County, then the requirement to run candidates in all districts would not obstruct access to the ballot. Conversely, if Illinois permitted a new party to run candidates only at large and in those districts where they could show the requisite support, then the requirement of a district-by-district showing of support would not exclude any candidates who could play a meaningful role in their respective elections. But the *combination* of the two requirements greatly restricts ballot access by geographically concentrated groups, so that combination is forbidden even if each requirement alone would be valid.

Illinois has also directly restricted the ability of parties which have attained a foothold in one political unit to associate with allies or adherents desiring to seek office in another political unit under the banner of the fledgling party. It has disallowed ballot placement for candidates using the name of a party already established in a different political subdivision. Illinois forbids this even though the established party makes no objection to such use of its name and even though that party describes the petitioning organization in the other subdivision as an affiliate. Such an absolute prohibition is impermissible.

Even if Illinois might have prescribed specific procedures to be followed in establishing such affiliations, it may not do so by retroactively placing a stringent and unpredictable restrictive interpretation on an ambiguous statute and then penalizing those who acted before the procedures were defined for failure to correctly forecast and comply with the not-yet-promulgated requirements. Since Illinois has yet to prescribe *any* procedure for affiliation among local political parties, it may not penalize the HWP candidates for acting on the basis of an informal affiliation.

ARGUMENT

There is no question here as to the HWP candidates' "preliminary showing of a significant modicum of support" in the constituencies from which they sought to be elected. *Jeness v. Fortson*, 403 U.S. 431, 442 (1971). The HWP candidates had more than 44,000 signatures on their City District component and over 50,000 signatures on their at-large component.[8] Illinois requires no more than 25,000 signatures for any constituency, up to and including the entire State.

By requiring *both* a full slate and 25,000 signatures on *each* component, Illinois has effectively required of Cook County parties double the number of signatures required for parties seeking to make nominations for statewide office, with no reason of any sort, let alone a compelling reason, for doing so. This fact alone shows a violation of the constitutional requirement expounded in *Illinois State Board of Elections v. Socialists Workers Party*, 440 U.S. 173 (1979) (because 25,000 signatures adequate for statewide candidacy, larger requirement for City of Chicago and Cook County unconstitutional). While that violation alone would require reversal of the judgment below, the HWP candidates surmounted even this unconstitutional hurdle: they obtained more than 50,000 signatures on their petition.

Nonetheless, the HWP was disqualified from the ballot on two grounds. Because it lacked sufficient demonstrated support in the Suburban District, it was not permitted to run candidates countywide or in the City District, despite its ample support in each of those constituencies. Moreover, because the HWP was already established in the City of Chicago, candidates were forbidden to run under its banner for Cook County office. Neither ground can withstand constitutional scrutiny.

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[8] The HWP candidates had only 7,800 signatures on their Suburban District component, but they do not here challenge exclusion of the suburban candidates from the ballot.

I. THE REQUIREMENT THAT A PARTY MUST HAVE SUPPORT IN *ALL* DISTRICTS OF A SUBDIVISION BEFORE IT MAY RUN CANDIDATES IN *ANY* PORTION OF THE SUBDIVISION UNCONSTITUTIONALLY INFRINGES THE RIGHT OF POLITICAL ASSOCIATION, ESPECIALLY WHERE THE DISTRICTS ARE OF UNEQUAL POPULATION.

"It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. *Elrod v. Burns*, 427 U.S. 347, 357 (1976) (plurality opinion); *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973); *Tashjian v. Republican Party*, 479 U.S. 208, 214 (1986).

In a representative democracy, "the voters can assert their preferences only through candidates or parties or both." *Lubin v. Panish*, 415 U.S. 709, 716 (1974). "[A] basic function of a political party is to select the candidates for public office to be offered to the voters at general elections." *Kusper v. Pontikes*, 414 U.S. at 58. "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes." *Williams v. Rhodes*, 393 U.S. 23, 31 (1968). Moreover, "limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group" can "threaten to reduce diversity and competition in the marketplace of ideas." *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983).

Thus, it is well settled that restrictions on access to the ballot burden both "the rights of individuals to associate for the advancement of political belief, and the right of qualified voters, regardless of political persuasion, to cast their votes effectively." *Id.* at 787. "Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). And the right to vote is "heavily burdened if that vote may be cast only for one of two [or three] parties at a time when other parties are clamoring for a place on the ballot." *Williams v. Rhodes*, 393 U.S. at 31. Thus, "[i]f the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest." *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214, 222 (1989) (citations omitted).

Exacting scrutiny is particularly necessary here for two additional reasons. First, the Illinois scheme grants unequal power to those voters residing in the Suburban District as opposed to those residing in the City District. Second, Illinois gives preference among political parties to those whose members are relatively equally divided between the two districts and disadvantages parties of equal size whose members are more concentrated in one district rather than the other.

A. By Requiring Equal Numbers of Signatures From Districts of Substantially Disparate Population, Illinois Violates the Requirement of Voter Equality in Selection of Representatives.

Voter equality is one of the most fundamental precepts of our representative form of government.

> Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.

Gray v. Sanders, 372 U.S. 368, 379 (1963).

The seminal application of that principle to the ballot access process came in *Moore v. Ogilvie*, 394 U.S. 814 (1969). For independent candidates for statewide office, Illinois required filing 25,000 signatures, including at least 200 from each of at least 50 counties. At the time, 93.4% of the State's registered voters resided in the 49 most populous counties and only 6.6% resided in the remaining 53 counties. This Court found the distributional requirement inconsistent with the constitutional requirement of voter equality, pointing out that:

> [I]t is no answer to the argument under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.

Id. at 818-19.

The Court illustrated the forbidden discriminatory impact as follows:

> Under this Illinois law the electorate in 49 of the counties which contain 93.4% of the registered voters may not form a new political party and place its candidates on the ballot. Yet 25,000 of the remaining 6.6% of registered voters properly distributed among the 53 remaining counties may form a new party to elect candidates to office. This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

Id. at 819.

Illinois then sought to replace this law by retaining the requirement of 25,000 signatures and limiting to 13,000 the number which could be counted from a single county. The Seventh Circuit struck down that version as conferring a similar discriminatory veto power:

> Under section 10-2 the entire electorate of Cook County, which represents 45% of all registered voters in Illinois, may not form a new political party and place its candidates on the ballot. Yet any 25,000 of the remaining 55% of registered voters properly distributed among the remaining 101 counties may form a new party to elect candidates to office. Put another way, the approximately 2,750,000 registered Illinois voters in urbanized Cook County do not have the power under section 10-2 to create a statewide political party to protect their own peculiar interests, while 25,000 voters in any two or more counties in rural downstate Illinois may create such a party to protect their distinctly different, and often competing interests. This two-county requirement, like the fifty county requirement in *Moore*, "discriminates against

> the residents of the populous counties of the state in favor of rural sections."

Communist Party v. State Board of Elections, 518 F.2d 517, 521 (7th Cir.), *cert. denied*, 423 U.S. 986 (1975).[9]

This conclusion is confirmed by the explanation of *Moore v. Ogilvie* in *Buckley v. Valeo*, 424 U.S. 1 (1976). There this Court upheld a system of matching funds for major party presidential candidates requiring raising of specified funds in at least 20 states. Reliance was placed on the unique and special need for dispersed geographic support created by the presidential election system: "A president is not elected by popular vote, but by winning the popular vote in enough states to have a majority in the Electoral College." *Id.* at 106. *Moore* was distinguished on the ground that:

> Only 7% of Illinois voters could have blocked a candidate from qualifying for the ballot, even though the statewide elections were decided by straight majority vote. The clear purpose was to keep any person from being nominated without support in downstate counties making up only 7% of the vote, but those same voters could not come close to defeating a candidate in the general election.

Id. at 144.

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[9] Since *Moore*, requirements of equal numbers of signatures from districts of substantially disparate population have consistently been declared unconstitutional. *Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262, 1272 (S.D. Ohio 1970), *aff'd mem.*, 409 U.S. 942 (1972); *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 990 (S.D.N.Y. 1970), *aff'd mem.*, 400 U.S. 806 (1970); *Bloomquist v. Thompson*, 739 F.2d 525, 527-28 (10th Cir. 1984); *Libertarian Party v. Beerman*, 598 F. Supp. 57, 62 (D. Neb. 1984); *Socialist Workers Party v. Hare*, 304 F. Supp. 534 (E.D. Mich. 1969); *but see Cavanaugh v. Schaeffer*, 65 Pa. Commw. 620, 444 A.2d 1308, 1310-11 (1982) (requirement of 100 signatures from each of five counties upheld because four most populous counties had only 41.8% of population and because case involved judicial election and judges were not considered "representatives").

That analysis is equally valid here. The Suburban District is 30% less populous than the City District, as shown by the Census figures and the apportionment of the County Board. Yet even though the residents of the City District have the votes, if united, to control all countywide offices and a majority on the County Board, the residents of the Suburban District have the power to prevent the formation of a political party to effectuate such control. Thus, there is a clear violation of ***Moore v. Ogilvie***.

B. Illinois Also Grants an Improper Preference to Parties Whose Members Are Geographically Dispersed.

Even if the equality of individual voters is maintained, this Court has noted that

> It is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status. "Our ballot access cases . . . focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the 'availability of political opportunity.'"

Anderson v. Celebrezze, 460 U.S. 780, 793 (1983) (footnote omitted). That is, a state may not skew the political process so as to favor some identifiable viewpoints as opposed to others held by an equal number of voters.

This sort of forbidden loading of the political dice is also inherent in the statute at issue here. The combination of the full slate requirement with a requirement of a district-by-district showing of support limits ballot access to those parties with sufficient support in *all* districts. This clearly favors groups which are roughly equally dispersed between the two districts. As such a group grows in numbers, the group will be able to meet the signature requirements in both districts at about the same time. But a group of equal size which is concentrated in one district would have a surplus of signatures in one district and a deficiency in the other, so that it would need to grow larger than a dispersed group to be equally able to qualify for the ballot. The more heavily concentrated the group, the greater the disparity in ability to qualify a party—to the point where a group entirely located in one district, no matter how large, could never qualify for the ballot.

Many identifiable interests in our society are concentrated geographically. For example, African-Americans, a group to which the HWP seeks to appeal, are concentrated in cities. On the other hand, European-Americans are much more evenly dispersed, at least in Cook County. Similarly, farmers are concentrated in rural areas, while other occupations may be more evenly dispersed throughout a state. A state may not structure the political process so as to prefer some groups to others in ways not corresponding to their ability to elect or defeat candidates once nominated. Thus, voters in one district cannot be given a veto power over candidates to be nominated in another district nor a veto power over the ability to nominate candidates at-large who possess the requisite modicum of support in the political subdivision as a whole.

Nor should it be dispositive that wider geographic support might be necessary to obtain a majority for an at-large position. By definition, new parties almost always will be at least third parties, so even a strong plurality might win an election. More importantly, as previously explained, the ability to field candidates can significantly advance the political interests of a new party's constituency even without ever winning an election. Consequently, no one group or identifiable class of groups may properly be given a preference over another group or class of groups in obtaining a position on the ballot.

Cases which have held otherwise have focused exclusively on the equality of power given to *individual* voters and failed to consider how geographic distribution requirements disadvantage concentrated *groups* of voters.[10] Yet, by definition, the activities of political parties involve groups of voters and not just individuals, so equal treatment of equally numerous *parties* is a matter of constitutional concern. Thus, the results reached in those cases should not be deemed dispositive of the argument presented here, which does not appear to have been considered. Moreover, several of the cases approve only a requirement for signatures in half of the equal-population districts involved, so those cases do not support the requirement here of signatures in *all* districts.[11] Similarly, none of them permitted lack of

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[10] *Morritt v. Governor*, 42 N.Y.2d 347, 397 N.Y.S.2d 929, 366 N.E.2d 1285 (1977), *appeal dismissed for want of a substantial federal question*, 434 U.S. 1029 (1978) (requirement of 100 signatures from each of half the Congressional districts in the state to obtain position on primary ballot for statewide office); *Udall v. Bowen*, 419 F. Supp. 746 (S.D. Ind. 1976), *aff'd mem.*, 425 U.S. 947 (1976) (500 signatures from each Congressional district to place name on presidential preference primary ballot); *Libertarian Party v. Bond*, 764 F.2d 538 (8th Cir. 1985) (requirement signatures equal to 1% of vote in all Congressional districts or 2% in half of districts); *Johnson v. Cuomo*, 595 F. Supp. 1126 (N.D.N.Y. 1984) (same requirement as in *Morritt* for new political party presidential candidates); *Libertarian Party v. Davis*, 591 F. Supp. 1561 (E.D. Va. 1984), *aff'd* 766 F.2d 865 (4th Cir. 1985) *cert. denied*, 475 U.S. 1013 (1984) (200 signatures from each Congressional district for new party presidential candidates).

[11] Summary adjudications by this Court are not precedential as to more than "'the precise issues presented and necessarily decided. . . . .' A summary disposition affirms only the judgment of the court below and no more may be read into [this Court's] action than was essential to sustain the judgment." *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983).

In this regard, it is significant that *Udall v. Bowen*, 419 F. Supp. 746 (S.D. Ind. 1976), aff'd mem., 425 U.S. 947 (1976), did not involve a candidate with geographically concentrated support but merely an inadvertent failure to make a timely filing of one component of the petition. Thus, the plaintiff there could not assert the rights of political parties, like the HWP, whose support is geographically concentrated. *See Rosario v. Rockefeller*, 410 U.S. 752, 757-58 (1973) (requirement of advance enrollment in party did not disenfranchise voter who could have enrolled in timely manner but failed to do so).

footnote continued on page 19

support in one district to prevent placement on the ballot of candidates in another district, when those candidates had ample support in the district where they proposed to run.

This Court should now consider the problem of discrimination against a geographically concentrated group and hold that this discrimination, as well as the improper enhancement of the power of the residents of the less populous Suburban District, violates the Fourteenth Amendment.

II. ILLINOIS HAS UNCONSTITUTIONALLY INFRINGED ON THE RIGHT OF THE HWP TO ASSOCIATE WITH THE HWP CANDIDATES FOR THE PURPOSE OF EXPANDING ITS ACTIVITIES INTO AN ADDITIONAL POLITICAL UNIT.

The HWP is an established political party in the City of Chicago. (HWP Pet. 6.) As such, it has an established constitutional right to associate with new and potential adherents for the purpose of seeking "political power in the community." *Tashjian v. Republican Party*, 479 U.S. 208, 216 (1986); *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214 (1989). Moreover, this right includes "the freedom to identify the people who constitute the association."

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footnote continued from page 18

In *Moritt v. Governor*, 42 N.Y.2d 347, 397 N.Y.S.2d 929, 366 N.E.2d 1285 (1977), *appeal dismissed for want of a substantial federal question*, 434 U.S. 1029 (1978), the issue presented in this Court related solely to a claim of unequal weighting to the votes of those residing in different districts. While the districts were of equal population, the distribution requirement was applied to a candidacy in a party primary and party members were not equally distributed among districts. Thus, the claim was that the districts had disparate populations *of those eligible to participate in party affairs*, thus making *Moore v. Ogilvie* directly applicable. Jurisd. Stmt., No. 77-524, 8-13. Rejection of *that* claim does not require that distributional requirements be sustained against the different challenge presented here.

Tashjian, 479 U.S. at 214; *Democratic Party v. Wisconsin ex rel. LaFollette*, 450 U.S. 107, 122 (1981). In *Tashjian*, the Court struck down a Connecticut law which required voters in any party primary to be registered members of that party *even though the party wished to permit independent voters to participate*. The Court found that because the statute limited the group of registered voters who could participate in the primary, the State impermissibly limited the party's "associational opportunities." 479 U.S. at 216.

The State of Illinois has similarly restricted the associational rights of both the established HWP and the petitioners who wish to participate in that party. This prohibition was imposed without regard to the shared desire of the HWP and the HWP candidates to associate with one another. Despite that desire, Illinois absolutely prohibited the use of the HWP name by the HWP candidates. On the record, the established HWP had no objection to the use of the HWP name by the HWP candidates. (Board Pet. App. 40a.) Both the HWP and the HWP candidates regard themselves as affiliated. Thus, as in *Tashjian*, there is no conflict between the associational interests of the party (the established HWP) and those whose participation the party encourages (the HWP candidates who seek to carry its banner). *Id.* at 216, n.7.

The interest asserted by Illinois is in preventing voter confusion. (Board Pet. App. 39a.) But there can be no confusion unless the two organizations claiming a single name are in fact independent of one another rather than being affiliates.[12] *Tashjian* teaches that while a state has a legitimate interest in preventing voter confusion, that interest does not make it permissible for the state to "act as the ideological guarantor" of the established party by ensuring that voters are not misled by a candidate whom the state views as not a "true" member of the party. *Id.* at 220. A state has no interest in limiting who a party can allow to operate under its name and in concert with it. The

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[12] It is not necessary that they be the same, any more than the Democratic Party of Cook County need be the same as the Democratic Party of DuPage County. It is enough that both groups regard themselves as being united in a common cause.

State of Illinois may have a legitimate concern in preventing two *different* parties with the same name from running candidates in different elections, but it cannot have a legitimate concern with whom a political party chooses to include among its members. As this Court has stated:

> The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

Id. at 224.

Nor can Illinois support its action by asserting that the HWP failed to follow the appropriate procedures to decide to affiliate with the HWP candidates. (See HWP Pet. App. 17 (ruling of the Circuit Court), 52-53 (dissenting opinion to Electoral Board decision)) To begin with, it was not at all clear that *any* action was necessary. Neither the Electoral Board nor the Circuit Court believed the prohibition on use of an established party name applied outside the political unit(s) in which that party was established. (Board Pet. App. 39a-40a, 20a-21a.) The Illinois Supreme Court has ruled that the Electoral Board and the Circuit Court misread the statute, but the HWP and HWP candidates could hardly be blamed for having shared that reading.

Moreover, even if the prohibition had been clear, there was (and is) no established procedure for an established party to authorize use of its name by aspirants to office in a different jurisdiction or to affiliate with such aspirants. Thus, if the HWP chose the wrong procedure, the cause lay largely in the failure of Illinois to prescribe a procedure (or even to indicate that consent or affiliation was possible).

Since the State has failed to make such a procedure available to the HWP, it cannot now attack the method by which the party has itself decided to expand. Moreover, the State certainly cannot create such a procedure after the fact and make it applicable to petitioners. A restrictive interpretation of an election rule which compromises fundamental rights may not be imposed without "forewarning" those subject to the rule. *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1970).

In *Briscoe*, voters and Chicago aldermanic candidates barred from ballots filed a civil rights action alleging that the election authorities violated their constitutional rights by rejecting signatures on nominating petitions for "highly technical reasons." *Id.* at 1051. The Seventh Circuit found that the authorities had employed a restrictive interpretation, contrary to its own past practice, of vague petition signature rules without any explanation or advance warning to candidates. The effect of this new interpretation was to "nullify previously acceptable signatures" at a time when petition circulators could no longer alter their circulating techniques. *Id.* at 1055. Because fundamental rights were implicated, "those interested require certain knowledge [at the time they act] of what is expected of them by the state." *Id.* The Seventh Circuit therefore held that "where there is no advance clarification or statement" of a rule, "the Constitution permits enforcement of the statutory rule in only the least restrictive and most obvious manner." *Id.* at 1056.[13] Application here, without any advance notice, of an ambiguous rule in an extremely restrictive way violates that principle.

Moreover, given the lack of specificity in the statute at issue combined with the complete absence of advance warning to petitioners regarding the nature of the Rule's application, the State cannot constitutionally justify the complete exclusion of the HWP candidates from the ballot. For even if the interpretation which prohibits the petitioners from using the HWP name can be viewed as reasonable, the harsh remedy of exclusion from the ballot cannot. Any voter confusion resulting from use of the HWP name could be eliminated simply by deleting that name from the ballot line on which the candidates would appear. *See Vasquez v. Municipal Officers Electoral Board*, 115 Ill. App. 3d 1014, 450 N.E. 2d 1379 (3rd Dist. 1983) (allowing candidates to appear but requiring omission of confusingly similar party name). Even if the objective is legitimate, the Constitution requires a state to accomplish that end narrowly and fairly so as to avoid obstructing and diluting these fundamental liberties. *Kusper v. Pontikes*, 414 U.S. 51 (1973).

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[13] *See Griffin v. Burns*, 570 F.2d 1065, 1075-79 (1st Cir. 1978) (unconstitutional to retroactively apply new interpretation where effect would be to disenfranchise voters whose ballots were cast in accordance with prior practice); *Gartrell v. Knight*, 546 F. Supp. 449, 453-54 (N.D. Ala. 1982); *Williams v. Sclafani*, 444 F. Supp. 906, 911-12 (S.D.N.Y. 1978), *aff'd mem.*, 508 F.2d 1046 (2nd Cir. 1978).

The State of Illinois seeks to place a wall around the established HWP without its consent and without any justification. By limiting whom the HWP can associate with, the State has violated the First and Fourteenth Amendments.

CONCLUSION

For all of the reasons stated above, the judgment of the Supreme Court of Illinois should be reversed and the Order of the Cook County Officers Electoral Board should be reinstated.

Respectfully submitted,

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